No. 2980

United States

Circuit Court of Appeals

For the Ninth Circuit.

In the Matter of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY, Bankrupt.

WILLIAM R. PENTZ, as Trustee in Bankruptcy of the Estate of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY,

Appellant,

vs.

H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY, Bankrupt,

Appellee.

Transcript of Record.

Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the Southern Division of the District Court of the United States, Northern District of California, First Division.

No. 8700.

In the Matter of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY,

Bankrupt.

Names and Addresses of Attorneys of Record.

For the Trustee and Appellant:

CLARENCE A. SHUEY, Esq., and WINFIELD DORN, Esq., both of San Francisco, California.

For the Bankrupt:

WILDER WIGHT, Esq., 5221 Broadway, Oakland, California.

In the District Court of the United States, in and for the Northern District of California.

No. 8700.

In the Matter of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY,

Bankrupt.

Amended Praecipe for Transcript of Record for Use on Appeal.

To the Clerk of the Above-entitled Court:

Please prepare a transcript of the record in the above-entitled matter to be used by the undersigned

trustee on appeal to the United States Circuit Court of Appeals for the Ninth Circuit under Section 25 (a) (2) of the Bankruptcy Act of 1898, as amended, from that certain judgment of the above-entitled court made and entered herein granting a discharge to the bankrupt herein. Please include in the said transcript the following documents:

1. This Praecipe.

2. The application of the bankrupt for a discharge, including notice, affidavit, and certificate.

3. From the Trustee's Second Account and Report and Petition for authority to oppose the discharge (marked "exhibit No. 7" by the referee), from the words "respectfully represents," page 1, omit to the end of paragraph two, page 14, ending with the words, "something can be realized further on them," and include all that follows from said ending to the bottom of page 16.

4. From the order settling the second account and report and order authorizing the trustee to oppose the discharge, Bkts. Ex. No. 9, the 1st paragraph, and then omit to the words "It is hereby ordered that the second account be," etc., and then commencing with said words and continue to the bottom of said page 2.

5. Appearance of trustee in opposition to bankrupt's [1*] application for a discharge.

6. Specifications of objections of the trustee to the application of the bankrupt for a discharge.

7. Answer of bankrupt to specifications of objections of trustee to bankrupt's application for a discharge.

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*Page-number appearing at foot of page of original certified Transcript of Record.

8. Certificate, pages 1 to 37, inclusive, of the referee in bankruptcy to whom was referred the issues joined by the opposition of the trustee herein to the bankrupt's application for a discharge, in which certificate said referee reported the facts and his conclusions upon said issues to the District Court.

9. Opinion of Judge Dooling, dated February 23, 1917, granting the application of the bankrupt for a discharge.

10. Motion of trustee for an order vacating said order of above court made on the 23d day of January, 1917, granting said bankrupt a discharge and for a further order re-referring the matter to the referee with affidavits of Clarence A. Shuey and Winfield Dorn presented to the Court on said hearing.

11. Petition of the trustee for rehearing presented to said court and heard at the time of the hearing of said motion to vacate.

12. Affidavit of Wilder Wight presented by counsel for the bankrupt on said hearing of the motion to vacate said order of the above court granting the bankrupt a discharge.

13. Judgment of the above court dated February 8, 1817, denying the motion of the trustee to vacate the previous orders of the above court granting said discharge and denying the petition for a rehearing.

14. Petition for appeal by trustee in bankruptcy and order allowing appeal.

15. Assignment of errors on appeal. [2]

16. Citation on appeal.

17. Admission of service of petition for appeal and order and assignment of errors.

18. Statement of evidence.
19. Stipulation for Diminution of record.

Dated February 17th, 1917.

CLARENCE A. SHUEY,
WINFIELD DORN,

Attorneys for William R. Pentz, Trustee of the Estate of the Above-named Bankrupt.

WILDER WIGHT,
Attorney for Bankrupt.

[Endorsed]: Filed Apr. 16, 1917, at 2 o'clock and 30 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [3]

(Title of Court and Cause.)

(Petition for Discharge.)

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States, for the Northern District of California:

H. S. White, of the County of Alameda, State of California, in said District, respectfully represents that on the 19th day of May, 1914, he was duly adjudged a bankrupt under the Acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property and has fully complied with all requirements of said acts and of the orders of the court touching his bankruptcy.

WHEREFORE he prays that he may be decreed by the Court to have a full discharge from all duties provable against his estate under said bankrupt acts except such debts as are acknowledged by law from such discharge.

Dated this 1st day of April, 1915.

H. S. WHITE,
Bankrupt.

(Duly verified.) [4]

(Title of Court and Cause.)

Notice of Hearing Application for Discharge from Debts.

Whereas application has been made by the above-named bankrupt, for a discharge, as provided by Section 14a of the Bankruptcy Law, approved July 1, 1898, it is ordered: That a hearing be had on such application before the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States for the Northern District of California, at the courtroom of said Court, in the United States Courthouse and Postoffice Building, in the city and county of San Francisco, State of California, on Saturday, May 15th, 1915, at the hour of 10 A. M. and at said time and place all creditors of said bankrupt, and all other parties in interest, may show cause, if any they have, why such application should not be granted.

Dated April 14, 1915.

ARMAND B. KREFT,
Referee in Bankruptcy. [5]

(Title of Court and Cause.)

(Affidavit of Mailing Notice to Creditors.)

J. O. England, being duly sworn, deposes and says: I am employed in the office of Armand B. Kreft, ref-

eree in bankruptcy and more than eighteen years of age; on the 14th day of April, 1915, I deposited in the Postoffice in said City and County of San Francisco copies of the annexed notice to creditors, each contained in a securely closed envelope, franked by proper notice of official business whenever addressed to a place within the United States, and duly postpaid whenever addressed to a place without the United States, and duly directed respectively to each of the creditors of said bankrupt named in the schedules filed herein, at the respective addresses stated in said schedules, except in the cases, where the creditor has designated an address other than that stated in said schedules, and in such case to designated address as on file herein.

J. O. ENGLAND.

(Duly verified.) [6]

(Title of Court and Cause.)

(Certificate of Referee on Application for Discharge.)

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States, for the Northern District of California:

I, Armand B. Kreft, Referee in Bankruptcy, to whom was referred the above-entitled matter, do hereby certify:

That on the 1st day of April, 1915, the bankrupt above-named filed with me his application for discharge from his debts, in accordance with the provisions of the Act of Congress entitled "An Act to Es-

tablish a Uniform System of Bankruptcy throughout the United States," approved July 1, 1898, which application is duly verified by the oath of said bankrupt; and that Saturday, the 15th day of May, 1915, at 10 A. M. before the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States for the Northern District of California, at the courtroom of said Court, in the United States Courthouse and Postoffice Building, San Francisco, California has been fixed by me as the time and place for the hearing of said application; and that on the 14th day of April 1915, written notice of the filing of said application and of the time and place fixed for the hearing thereon was given to the creditors of said bankrupt, by depositing in the United States postoffice in the city and county of San Francisco, State of California, a copy of such notice enclosed in an envelope bearing the frank of Armand B. Kreft Referee in Bankruptcy duly addressed to each of the creditors named in the schedules filed by said bankrupt herein or who subsequently filed claims herein, at his place of residence as the same is designated in said schedules, or as requested by said creditors.

Said application for discharge and a copy of the notice mailed to creditors as aforesaid and affidavit of mailing such notices are transmitted herewith.

Dated this 14th day of April, 1915.

ARMAND B. KREFT,
Referee in Bankruptcy.

[Endorsed]: Filed Apr. 20, 1915, at 3 o'clock and 30 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [7]

(Title of Court and Cause.)

(Second Account and Report and Petition for Authority to Oppose Application of Bankrupt for Discharge.)

To the District Court of the United States in and for the Northern District of California, and to Hon. ARMAND B. KREFT, Referee in Bankruptcy:

William R. Pentz trustee of the estate of the above-named bankrupt, presents herewith his second account and report, and respectfully represents:

* * * * * * * * * * *

That the bankrupt herein has filed a petition in the District Court asking that he be discharged from his debts and said application is set for hearing before the above District Court on May 15th at ten o'clock and notices sent out to the creditors thereon. That many of the largest creditors, as well as small ones, have inquired from your Trustee as to whether in his opinion he believes reasonable grounds exist for the opposing of said application by the bankrupt for a discharge. That if so, said creditors desire your trustee to take such steps on behalf of all the creditors as may be necessary to oppose the same. That your trustee has taken the matter up with his attorneys and been advised that reasonably strong grounds exist to warrant the trustee to oppose said application. That it appears from the testimony taken herein, and from information furnished to your trustee, that said bankrupt obtained money or property [8] upon a materially false statement in writing made by him to a creditor of this estate for the

purpose of obtaining credit from such person. That it appears from the testimony of the bankrupt and from the records of the bankrupt's business that he kept a very inadequate, in fact, practically no books showing the financial condition of the bankrupt's business, such as should reasonably be kept in a business of the character and size of the bankrupt's, and your trustee believes that the failure to keep the same was with the intent on the part of the bankrupt to conceal his financial condition so that such financial condition could not be ascertained from said books of account. That there are certain other legal grounds upon which trustee believes the petition may be opposed also. Consequently your trustee asks that an order be made by the above court at a meeting of creditors called for that purpose, authorizing and directing him to interpose objections to said bankrupt's discharge as hereinbefore set forth.

WHEREFORE, your trustee prays for an order of this Court settling and allowing his second account and report and approving all his acts and deeds, and directing the payment of such demands, expenses and fees as the Court may deem just and proper, and declaring a second dividend upon allowed claims, and for an order authorizing and directing him to interpose objections to said bankrupt's discharge, as hereinbefore set forth, and for such other and further

order as to this Court may seem meet and proper.

WILLIAM R. PENTZ,
Trustee.

WINFIELD DORN,
CLARENCE A. SHUEY,
Attorneys for Trustee.

(Duly verified.)

[Endorsed]: Filed Apr. 24, 1915, at 10 o'clock and 30 min. A. M.

A. B. KREFT,
Referee in Bankruptcy. [9]

(Title of Court and Cause.)

(Order Settling Second Account and Report of Trustee.)

The second account and report of William R. Pentz, trustee of the estate of the above-named bankrupt, coming on regularly the 7th day of May, 1915, and thereafter regularly continued to the 25th day of May, 1915, to be heard, due notice of the hearing of said account having been given to all creditors as required by law;

* * * * * * * * * * *

IT IS HEREBY ORDERED that said second account be, and the same is hereby, settled and allowed as correct, and that the petition for authorization to the trustee to oppose the discharge of the bankrupt herein be and the same is hereby granted.

IT IS FURTHER ORDERED, that the trustee pay the respective amounts hereinbefore set forth to the respective parties.

IT IS FURTHER ORDERED that a second dividend of five per cent upon all claims be and the same hereby is declared and ordered paid in accordance with the dividend list filed contemporaneously herewith.

A. B. KREFT,
Referee.

[Endorsed]: Filed Jun. 12, 1915, at 10 o'clock and 50 min. A. M.

A. B. KREFT,
Referee in Bankruptcy. [10]

(Title of Court and Cause.)

(Appearance on Opposition to Discharge.)

To the Honorable District Court of the United States, for the Northern District of California, First Division:

William R. Pentz, Trustee of the above estate, having been first duly authorized by the above court to interpose objections to the bankrupt's discharge, at a meeting of creditors called for that purpose, the clerk of this Court will please enter our appearance as attorneys for William R. Pentz, trustee of the above estate.

We desire on behalf of said trustee to file specifications of objections to the application of said bankrupt for a discharge.

Dated this 10th day of May, 1915.

CLARENCE A. SHUEY,
WINFIELD DORN,
Attorneys for Trustee.

[Endorsed]: Filed May 11, 1915, at 3 o'clock and 45 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [11]

(Title of Court and Cause.)

(Specification of Objections to Application for Discharge.)

William R. Pentz, trustee of the estate of the above-named bankrupt, opposes and objects to the granting of the application for a discharge herein by the above-named bankrupt and for ground of such opposition and objection makes the following specification, and on information and belief alleges:

That on or about the 19th day of April, 1913, said bankrupt endeavored to obtain certain credit from time to time with the Bank of California National Association of San Francisco, and for the purpose of obtaining said credit from said bank made, executed and delivered to said bank, on or about said day, a statement in writing in words and figures as follows, to wit:

To THE BANK OF CALIFORNIA NATIONAL ASSOCIATION OF SAN FRANCISCO, CAL.

H. S. WHITE MACHINERY CO.
H. S. WHITE, Prop.
Second-Hand Machinery in All Its Branches.
650–660 Brannan St.

For the purpose of procuring credit from time to time, with the above bank for our negotiable paper, or otherwise, we furnish the following as being a fair

and accurate statement of our financial condition on the 31st of December, 1912: [12]

ASSETS.

Cash on hand in Bank	$ 2,716.18
Accounts Receivable	12,647.19
Merchandise in Stock	122,654.75
	$138,018.12
Plant	5,200.00
Building and Fixtures	2,200.00
Tools, Equipment, etc	700.00
Horses & Wagons, etc	1,500.00
	$147,618.12

LIABILITIES.

Accounts Payable	1,464.21
Bills Payable (to Bank)	10,900.00
Bills Payable (for Mdse.)	3,675.00
	$ 16,039.21
NET WORTH	131,578.91
	$147,618.12

(Signed) H. S. WHITE.

This statement must be signed by an authorized officer of the corporation or by a member of the firm.

What is your usual date for taking inventory? ..... Dec. 31st

How much insurance do you carry on merchandise? $12,000.00

How much insurance do you carry on buildings, etc.? ..... $ 2,500.00

That upon the execution and delivery of said statement as aforesaid said bank lent to said bankrupt certain moneys amounting to the sum of Ten Thousand Dollars ($10,000) or thereabouts. That is appears from said statement that said bankrupt had liabilities amounting to the sum of Sixteen Thousand and Thirty-nine and 21/100 Dollars ($16,039.21).

That from the testimony of said bankrupt taken herein, together with the records and files of the above court, it appears that the liabilities of said bankrupt on December 31, 1912, the date on which the financial condition of the above bankrupt was computed in said statement, and on April 19, 1913, the date when said statement was delivered to said bank, far exceeded thesum named in the above statement. [13]

That according to said statement said bankrupt had a usual date for taking inventory, to wit, December 31st. That according to the testimony of the bankrupt taken herein it appears that said bankrupt had no usual date for taking inventories and in fact took no inventory such as is usually taken in a business of this character.

That it further appears that said bankrupt failed to keep books of account or records from which his financial condition might be ascertained so that it appears to be impossible to determine exactly what the financial condition of said bankrupt at said time or at any time subsequent thereto is.

That it further appears from said statement that said bankrupt had merchandise in stock as an asset of the value of $122,654.75. That from the records

of the above court and the testimony taken herein it appears that the merchandise in stock of the above bankrupt on said December 31, 1912, and on April 19, 1913, was far below said sum.

That said bank in making said loan to said bankrupt relied upon said statement in extending all credit given to said bankrupt, the amount of which appears in said creditor's claim on file herein.

That the statements given in said application for credit by the bankrupt as to his financial condition were false, and that said false statements were made with the intent and for the purpose of obtaining credit from said bank. That said bankrupt with intent to conceal his financial condition has destroyed, concealed or failed to keep books of account or records from which his financial condition might be ascertained. That said statement showing a net worth of $131,578.91 did not state the true financial condition of said bankrupt at the times hereinbefore mentioned and was [14] false and was made with the intent and for the purpose of fraudulently obtaining credit from said bank.

WHEREFORE, the trustee herein objects to the granting of the application for a discharge herein, and a hearing and the judgment of the above court is asked thereon.

WILLIAM R. PENTZ,

Trustee, of the Estate of H. S. White, Doing Business Under the Name of H. S. White Machinery Co.

WINFIELD DORN and,

CLARENCE A. SHUEY,

Attorneys for Trustee.

United States of America,
Northern District of California,—ss.

William R. Pentz, trustee of the above estate, being first duly sworn, deposes and says: That he has read the foregoing specification of objections to application of the bankrupt herein for a discharge and knows the contents thereof, and that the statements of fact contained therein are true, according to the best of his information and belief.

WILLIAM R. PENTZ.

Subscribed and sworn to before me this 4th day of June, 1915.

[Seal] JAMES MASON,
Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jun. 5, 1915, at 11 o'clock and 40 min., A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [15]

(Title of Court and Cause.)

(Answer to the Specification of Objections to the Application for Discharge.)

Comes now H. S. White, and for answer to the objections of William R. Pentz in the above-entitled estate, denies and alleges as follows:

1. Denies that on April 19, 1913, the date that said statement was delivered to the Bank of California National Association, that the indebtedness of said bankrupt far exceeded the sum named in said statement.

2. Denies that according to said statement, said bankrupt had a usual date for taking an inventory.

3. Denies that said bankrupt failed to keep books of account or records from which his financial condition might be ascertained; denies that it is impossible to determine exactly what the financial condition of said bankrupt at said time or any time subsequent thereto is or was.

4. Denies that the merchandise and stock of the bankrupt was, on the 31st day of December, 1912, and on April 19, 1913, or at any other time, far below or below the sum mentioned in said statement.

5. Denies that said bank in making the loan mentioned in said objections to said bankrupt relied upon said statement in extending all credit given to said bankrupt.

6. Denies that the statements given in said application for credit by the bankrupt were or are false.

7. Denies that any false statements were made by said bankrupt with the intent and for the purpose of obtaining credit from said bank.

8. Denies that said bankrupt with intent to conceal his financial condition has destroyed or concealed or failed to keep books of account or records from which his financial condition [16] might be ascertained.

9. Denies that said statement did not state the true financial condition of said bankrupt at the time mentioned; denies that said statement was false; denies that said statement was made with the intent or for the purpose of fraudulently obtaining credit from said bank.

WHEREFORE, said bankrupt prays that the objection heretofore filed by said William R. Pentz be denied, and that said bankrupt have judgment of this Court discharging him as prayed for in the petition on file herein.

H. S. WHITE,
Bankrupt.

(Duly verified.)

[Endorsed]: Filed, Jun. 26, 1915, at 10 o'clock and 45 min. A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [17]

(Title of Court and Cause.)

(Referee's Report on Opposition to Discharge.)

To the Honorable MAURICE T. DOOLING, Judge of the District Court of the United States, Southern Division of the Northern District of California:

The undersigned, referee in bankruptcy, to whom was referred the issues joined by the opposition of William R. Pentz, trustee of the estate of the above-named bankrupt, to the bankrupt's application for discharge, to ascertain and report the facts and his conclusions thereon, respectfully certifies and reports:

That upon the hearing of said matter Clarence A. Shuey and Winfield Dorn, Esqs., appeared as counsel for the Trustee and Wilder Wight, Esq., appeared for the bankrupt.

The specifications allege two grounds of opposition: first, that the bankrupt obtained credit, to wit:

The sum of $10,000 or thereabouts from the Bank of California National Association of San Francisco, California, upon materially false statements in writing made by him to said bank for the purpose of obtaining said credit; second, that the bankrupt, with intent to conceal his financial condition, failed to keep books of account or records from which his financial condition might be ascertained.

The bankrupt filed an answer to these specifications, the substance of which answer is a denial that the statement [18*—1†] to the bank referred to in the specifications did not state the true financial condition of said bankrupt at the time mentioned and denial that it was made with intent or for the purpose of fraudulently obtaining credit from the bank, and the bankrupt also denies that with intent to conceal his financial condition he has destroyed or concealed or failed to keep books of account or records from which his financial condition might be obtained. W. E. Cashman, Esq., appeared for the bankrupt on the filing of said answer. He did not thereafter appear on said matter; Mr. Wight having been substituted as attorney for the bankrupt. On the hearing before the referee, Mr. Wight, on behalf of the bankrupt, interposed certain objections to the sufficiency of the specifications and the legality of the authorization given the trustee to take the opposition, which were overruled. By amendment to the Bankruptcy Act in 1910, it is provided that a trustee shall not interpose objections to a bankrupt's discharge until he has been authorized to do so at a meeting of the cred-

*†Original page-numbers in Referee's Report on Opposition to Discharge as same appears in Original Certified Transcript of Record.

itors called for that purpose. The point taken by counsel is that the notice sent out by the referee of the hearing upon the trustee's petition to oppose the bankrupt's discharge did not contain the words that "a meeting of creditors was called for that purpose." The notice reads as follows:

(Title of Court and Cause.)

To the Creditors:

Take notice, that William R. Pentz, trustee herein has filed his Second Account, and that at the office of the undersigned, Room 202 U. S. Court House and Post Office Building, San Francisco, California, on May 7th, 1915, at 10 A. M., said account will be examined and passed upon, and a dividend declared, and further take notice that said trustee has filed herein a petition for an order authorizing him to oppose the discharge of said bankrupt, which will be heard at the time and place aforesaid.

Dated April 27, 1915.

ARMAND B. KREFT,
Referee in Bankruptcy. [19—2]

A copy of this notice was duly mailed to each creditor scheduled by the bankrupt, or if the creditor has appeared herein, to the address as given by such creditor. At the time set for the hearing no creditor appeared in opposition to the making of the order authorizing the trustee to oppose the discharge.

It therefore appears that the creditors were given notice of the filing of the trustee's application, and of the time set for the hearing, which, in my opinion, sufficiently complies with the act. In my opinion the defects of this notice, if any, can still be cured on

ratification by the creditors. It is a provision clearly intended for the protection of creditors and it is not an additional right or privilege extended to the bankrupt. It is significant that the amendment does not provide for notice to the bankrupt of the trustee's application. In my opinion he is not entitled to be heard upon the application and could not review the order made. The order of authorization made by the referee is no doubt a reviewable order and can only be attached on review and then only by a party entitled to review the same.

Counsel also objects to the form of the verification of the specifications which are verified by the trustee to the best of his information and belief.

Counsel cited in his opening brief certain cases which hold that facts stated upon mere information and belief are insufficient on which to ground specifications on the opposition to a discharge.

In case of In re White, 222 Fed. 688, it was said:

> "Facts stated upon mere information and belief are insufficient upon which to ground specifications in opposition to a discharge. It was not intended, [20—3] by fixing the statutory grounds for opposing a discharge, to afford the objectors opportunity to go upon a voyage of discovery for ascertaining whether, perchance, they might find something that would defeat the bankrupt's purpose."

Prior to the amendment of 1910, a trustee could not oppose a bankrupt's discharge. It is not to be expected that a trustee, who is often a stranger to the parties in interest, will have first hand knowledge

of the acts of the bankrupt, his information necessarily comes from his investigations in performing his duties as trustee, nor, is it to be expected that each of the persons from whom the trustee obtains information of the facts upon which he grounds his specifications shall join in opposition by verifying the specifications.

The objections found by the Court, in re White, that by permitting specifications on information or belief might encourage creditors to go upon a voyage of discovery, does not apply to a trustee, who, when he takes an opposition, does so only after due authorization by the Court upon notice to the creditors. It is my opinion that the verification of the specifications is sufficient.

The statement of assets and liabilities furnished by the bankrupt to the bank contains the following items:

ASSETS.

Cash on Hand and in Bank	$ 2,716.18
Accounts Receivable	12,647.19
Merchandise in Stock	122,654.75
Total	138,018.12
Plant	5,200.00
Buildings and Fixtures	2,200.00
Tools, Equipment, etc	700.00
Horses and Wagons, etc	1,500.00
Total of all Assets	147,618.12

LIABILITIES. [21—4]

Accounts Payable	$ 1,464.21
Bills Payable (to Bank)	10,900.00
Bills Payable (for Mdse.)	3,675.00
	$16,039.21
Net Worth	131,578.91
	$147,618.12

The specifications charge that the statement as to the amount of liabilities is materially false, in that the bankrupt's liabilities on December 31, 1912, the date under which the financial condition of the bankrupt was computed on said statement, and on April 19, 1913, the date when said statement was alleged to have been delivered to the bank far exceeded the sum named, and that the statement of assets, merchandise in stock, $122,654.75, is materially false, in that merchandise in stock, at the dates above mentioned was far below said sum, and that the statement showing a net worth of $131,758.91, did not state the true financial condition of said bankrupt at the times aforesaid. The matter has been briefed at length. The brief of counsel for the bankrupts consists of 75 pages. The transcript upon the hearing of the opposition, comprises 164 pages, and the testimony on general examination, so far as it is relative, was admitted in evidence. This testimony covers 230 pages. I have made a summary of such portions of the evidence as I deemed material, leaving counsel to point out to the Court any testimony not referred to by me which they may deem should have been included in the summary. The references

are to the transcript of the testimony taken on the opposition unless otherwise stated. I have arranged the summary of the testimony according to the subject matter, such as transactions with the Bank of California, with the Seaboard Bank, indebtedness owing by the bankrupt at the [22—5] time given in the statement to the bank, the stock in trade of the bankrupt and the books of account kept by the bankrupt. I will take up first the matters surrounding the obtaining of the loan from the Bank of California.

The bankrupt testified that it was not over 48 hours after he first went into the Bank of California to get the loan that the loan was granted, that Mr. Moulton took him into Mr. Anderson's room and that he explained that he wanted to open an account with the bank, that he was being robbed by the Seaboard Bank. That he asked for an accommodation of $20,000, which was granted him, and that the following conversation took place (pages 107–109):

"Q. What was it? Just state it. A. Well, Mr. Anderson wanted to know why I was leaving the bank where I was banking.

Q. I see. A. I took out a note that I had paid to the Seaboard Bank, and showed him the—he took the note and looked at it.

Q. How much was that note for? A. It was for $15,000. On the back of the note it showed where $300 was taken off the face of it at the time I borrowed it, or, in other words, instead of having $15,000 placed to my credit, there was only $14,700 placed to my credit, and aside from that

I showed him where the Seaboard Bank was charging me 8% for the money. Mr. Anderson said, "I don't see why you are staying in a bank of that kind that length of time." I said, "Well, I got in there, and I first went in there he didn't do that, but after I began owing him a little money, he began shaving me, both coming and going." And Mr. Moulton laughed to Mr. Anderson, and said, "We have [23—6] heard all kinds of things happening with this gentleman," without mentioning any names, "but we never knew they did things as bad as this. Do you know Mr. Tyson personally?" I said I did. He said, "Do you know him pretty well?" I said I thought I did. Well, he said to Mr. Moulton—Mr. Anderson speaking—"I guess if Mr. Tyson can let this man have $15,000, we can let him *has* what he wants."

Q. Did they ask you with regard to your business condition, what you were doing, and one thing and another?

A. No, I referred them to anybody that I was doing business with.

Q. Did they talk to you about the matter?

A. Yes, they just asked me if—there was one thing that they noticed in the report that had received, and that was that Mrs. White held a lot of real estate.

Q. In her name?

A. In her name. And they wanted me to explain that. I told him I could not explain it, only the fact that it was her property. Well, he said, "Do you think she would have any objection to endorsing for you?" I told him I didn't think she

would; that I was sure of it. He said, "Do you think she will endorse a note for you, a guaranty note for $20,000?" I told him she certainly would. Well, he said to Mr. Moulton, "I guess you had better make a guaranty note and give it to Mr. White and have Mrs. White endorse it."

Q. Was that done?

A. Mr. Moulton wrote it out in longhand himself and gave it to me, and told me to take it over to Mrs. White and when she endorses it, he would give me credit for this $20,000, or that I would be permitted to draw up to $20,000. And I took this particular document over to Mrs. White, but instead of putting her name where there was a little lead pencil cross marked, she [24—7] put it in the placer where the date was, on the bottom.

Q. Was that similar in form to the one that has been introduced in evidence?

A. Yes, sir, just exactly like that.

Q. But it was not that one?

A. Not that one. It was in typewritten form, if I remember right.

Q. What is the history of this one?

A. I brought it back to Mr. Moulton, to his office, and he said, "This won't do. You have got this in wrong place. The date should have been in here." He said, "Just wait a minute." And he took this paper, copied it, gave it to some official in the bank to copy on the machine, and the result was this other one that we have now.

Q. And afterwards did Mrs. White execute the one that we now have?

A. Yes, sir. I took that over. I don't know whether it was that day or not. But I immediately had Mrs. White sign it, and when I came back, Mr. Moulton gave me a bank-book and a check-book. I told him I only really needed $10,000 at that time. I told him I would like to get rid of some of my small debts that I had, and I never drew more than that ten.

Q. When was this in reference to this giving to you of the bank-book and opening your account? When was this in reference to the delivery of the guaranty signed by Mrs. White?

A. It was that very same day.

Q. Do you mean before, immediately afterwards, or before, or at the same time?

A. After I brought this document signed by Mrs. White.

Q. Then he gave you the credit?

A. Yes, sir, then it was started moving.

Q. At the time of these negotiations and to the time that you procured the money from the Bank of California, had [25—8] you furnished them a statement, the statement here that there has been a good deal of talk about? When did you give them the statement.

A. I gave them that statement after, I should judge—I would not say positively, but about a week afterwards.

Q. About a week afterwards?

A. Yes, as near as I can remember, because he said he observed that there was no such statement in the bank, and it was customary for them to have a

business statement of that kind, and would I please furnish them with one.

Q. Are you sure, Mr. White, that the statement was not furnished before you got the loan?

A. I am positive that it was not.

Q. Well, you have heard Mr. Moulton's testimony.

A. I don't care what Mr. Moulton said. I know positively that it was not so." He further testified that the Bank of California never pressed him for the payment of the $10,000 loan and never asked him to pay it (page 111).

Concerning the sum of $8,500 withdrawn from the Bank of California immediately after the $10,000 loan was made, he testified as follows (Gen. Ex., p. 67):

"Q. I noticed from your check book that on April 19th, 1913, you withdrew $8,500 from the Bank of California. What was that drawn for?

A. I drew that money with the original intention of paying it to the Seaboard Bank. I believe there was several attachments. There must have been a couple of attachments, I believe there was, and there was a run the next morning and I had to pay that out.

Q. To whom did you pay that money?

A. I could not tell you at this moment unless I had the books, or something to go by. [26—9]

Q. You were attached on April 19th?

A. Somewhere around there, or there were to be attachments."

And at page 152 referring to his credit at the Bank of California, he further testified: "A. When

I used that credit it was my original intention to get rid of the Seaboard Bank as quick as I possibly could. The rate of interest was very excessive, and I felt that anyhow I could do better. When I got back to the shop it seems for some reason that I can't explain at this minute that there was an abundance of N. S. F. checks that Mr. Tyson of the Seaboard Bank had turned out, marked 'N. S. F.' That money that I had I intended to pay the Seaboard Bank that day. I was obliged to pay these checks and other things that were necessary to pay with that money, for the next day or so." (Page 112, Opposite Testimony).

Asked as to the immediate reason of his failure, he stated that it was an attachment on a Saturday afternoon, after banking hours, by the Seaboard Bank, which attached for $9,280 the amount he was indebted to them, that they had not threatened to put the attachment on, that Mr. Tyson of the Seaboard Bank was complaining very bitterly that his bank balances were not very big, and was asking him to be more prompt in the payment of his paper. When asked the question, "What I want to know is this: Did he notify you to come to the bank, or did he send any other official or his attorney, and say to you "Now, here, Mr. White, pay that paper in one, or two, or three days, or we will attach you"? Was there anything like that? A. No, it is not. If he had, I would have gone to the Bank of California and got the money and paid him and got rid of him."

At page 140 of the Opposition Testimony, Mr. White further testified: "Q. What did you intend

doing with that $10,000? [27—10] A. I originally intended to pay Mr. Tyson, and get rid of him, get rid of Mr. Tyson's bank, because I had gone into Mr. Moulton and told Mr. Moulton that the reason I wanted to change was to get rid of him, and nothing would give me more pleasure than to get out of Mr. Tyson's bank, but when I got back to the shop two other people came in there that I thought there would be no hurry about, because I could pay them whenever I liked, like a whole lot of other creditors, but they simply got me that day. I thought I was going to get rid of those dogs once and forever, and figured up how much it would take me to get rid of them, and I was going to use this money to pay them. Well, the first thing I knew the Seaboard National Bank rang up and said, 'Your acceptance given of Mr. Silverman of a certain date has become due yesterday, and yet we have not seen Mr. Silverman. Kindly come down here.' Then I suppose it didn't take fifteen minutes. It was after three o'clock, then when Mr. Hall rang up, and was talking to the girl and said? 'Blum has fallen down on his note.' I don't suppose Mr. Hall knew that Mr. Tyson had just rung up. Well, I was obliged to go down and straighten those matters up, and before I got through, $8,500 of that money had just simply vanished, as those things had to be taken care of, but nearly all of it went to the Seaboard Bank on these acceptances and notes that people hadn't taken care of, which they generally did. Under the conditions of those acceptances, I would like to take car of that paper. If I didn't, it was directly charged back to

me, so I had to go to the bank and pay it. But at any rate, the paper had to be taken care of at maturity. I believe Mr. Shuey and Mr. Dorn had gone over it quite extensively [28—11] prior to Mr. Wight ever coming into the case. This money had practically all gone to the Seaboard Bank. At page 154, Opposition Testimony, when asked the question "Q. You went to the Bank of California, trying to get further loans? Why didn't you go to the Bank of California to get another loan when the Seaboard attached you? A. Well, I was not going to make a fool of myself. I had told the Bank of California that I was going to get rid of him to get rid of Tyson."

J. E. HALL.

Mr. J. E. Hall testified that he is assistant cashier in the Seaboard National Bank, that according to the books of the bank, Mr. White owed the Seaboard National Bank on December 31, 1912, $14,071.65, and that on the said date Mr. White had on deposit in said bank $561.25. In the cross-examination he testified that Mr.White was in the habit of discounting notes of other people at said bank, that when the bank advanced money on such notes they would charge Mr. White's account with the amount advanced, that Mr. White did not take the money with him it would be credited to his account, that when the note was paid, Mr. White's loan account was reduced just that much (page 23), that on December 31, 1912, the direct liability of Mr. White to the bank was $5,375, that the balance charged to Mr. White was represented by notes discounted (page 27).

IRVING F. MOULTON.

Mr. Irving F. Moulton testified in substance as follows:

That he is vice-president and cashier of the Bank of [29—12] California, and was cashier on December 31, 1912, (the date of bankrupt's financial statement, Ex. "A") and was vice-president and cashier on or about Apr. 19, 1913 (the date of the loan of $10,000 by the bank to the bankrupt), that early in 1913 Mr. White applied to the bank for a loan of $10,000 and gave his promissory note, that at the time of the making of the loan Mr. White furnished a financial statement, that at the time that Mr. White applied for the loan, he furnished Mr. White with the statement Ex. "A" to be filled out and Mr. White returned it and that Mr. White was then granted the loan, that the loan was not granted until after the statement was given (page 4), that Mr. White stated that Mrs. White owned some real estate, and that she would give a mortgage on it if the bank wanted it and that he replied that they would be satisfied if she would sign a guaranty and that she signed the guaranty, Ex. "C," that he could not state whether this guaranty was given prior or subsequent to the loan, "It must have been about the time; that the guaranty was not taken into consideration at the time the loan was made (page 6), that the loan was based upon Mr. White's statement. In the cross-examination he testified that it was a practice to consult with Mr. Anderson, president of the bank, before making loans to a new customer. Upon being shown the guaranty, which is in the sum of $20,000,

the witness was positive that the limit of the credit extended to Mr. White was $10,000 notwithstanding the amount mentioned in the guaranty, that he would not say that he was not to have more because he did loan him more afterwards (page 10). The witness further stated that he fixed the time when the statement was received in relation to the time the loan was made, not from his independent recollection [30—13] but from the ordinary course of business, the ordinary course of business the statement was received before the loan was granted. Upon his attention being called to the amount of liabilities in the statement, $16,000, and asked if the liabilities had shown $10,000 more, $26,000, would he have made the loan, the witness replied that if he had the same opinion of Mr. White he would have granted it (page 12). He further stated that we like to have an inventory made as near as possible to the time when they got the statement, that the note, $10,000, dated April 19, 1913, was later renewed, that he does not remember why it was renewed, on March 24, 1914, and on March 25th, the next day a further loan or $1225 was made, that he had confidence in Mr. White, that the loans were for temporary purposes, something special, what it was he does not now remember, that he thinks he also at the time of making the loan of $10,000 had a mercantile statement or report concerning Mr. White's financial condition. Mr. Moulton produced a commercial report, which is copied in the record at page 44, which was offered in evidence by attorney for the bankrupt. This report contains the following: October 3, 1913, stock on

hand at $140,000, and in addition, between 10 thousand and 12 thousand dollars in good accounts receivable and small cash balance in bank and current indebtedness of about $20,000. The report further states; October 3, 1912, "further investigation in claims of H. S. White to certain real estate in his statement of September 16th last, have been confirmed, an estimate of his worth in that report is believed to be reasonable, conservative and reliable, and it is felt that he can be safely rated not to exceed $75,000 in tangible net resources and **[31—14]** good credit for current requirements. Mr. Moulton testified that had this report in his possession at the time the loan was made and stated that they must have read it at the time that they talked of the loan, that he could not state whether he got this report for themselves or from somebody else, but, that it is his recollection that he read the report, and Mr. Moulton on page 48 testified that upon the statement of his assets of $147,000 and his *het* worth, $131,000, that they would consider themselves justified in giving him a credit of $20,000 on investigation, that Dun's report lent value to Mr. White's statement (page 49). At page 131–132, Mr. Moulton testified that when Mr. White's note fell due that the bank would renew the note and the method of renewing it was to have a new note made out and the old note would be paid by check against the new credit. New notes replacing prior notes were given on July 18, 1913, Oct. 18, 1913, January 20, 1914, and Apr. 20, 1914. Concerning these notes Mr. Moulton testified as follows:

"Q. Now, Mr. Moulton, you have just heard Mr. White's testimony here as to his recollection of the method that those notes were renewed? A. Yes.

Q. From looking at these books and refreshing your recollection, or from what these books show, will you say that it was correct? He testified, Mr. Moulton, that his custom was to go in when those notes were due and execute a new note and then draw a check and pay the old note. Would you say that was correct, from looking at this transcript from your books? A. I would say that he was correct in regard to the physical part of it, but I don't want you to understand that he borrowed $10,000 so as to make it $20,000. That would not be correct" (page 131–2). **[32—15]**

"Q. Would you say it was correct, so far as the form the transaction took, that he negotiated a new note and then drew a check and paid the old note? A. Of course, I can't remember the exact words that he used in every particular case, because there are a good many a day, but whatever he said about the old note led me to believe that he was unable to pay his note, and that he would like to renew it, and the method of renewing it was to have a new note made out and give us a check for the other note" (page 132).

FRANK B. ANDERSON.

Mr. Frank B. Anderson testified that he is president of the Bank of California, that about April 19, 1913, Mr. Moulton brought Mr. White into his (Anderson's) room, one of his duties is to sanction new loans of credit granted by the bank, Mr. White

complained of some treatment that he had received from another institution and stated that he wanted to get away from that institution and wanted to do business with the Bank of California. I went over Mr. White's figures with him and told Mr. Moulton that we could grant a line of credit. Witness then identified the figures in the financial statement "Trustee's Ex. A" being the figures referred to by him. At page 160 he stated that he did not remember the limit of the line of credit that was extended, that he remembered discussing with Mr. White the risky nature of the business that he was conducting and remembered that Mr. White offered some security, property that his wife held, or the fact that his wife held some property, that he remembered the relation of the figures in the statement which show a new worth of about $130,000 or $126,000 and that if Mr. White's statement [33—16] had a new worth of $100,000 instead of $130,000 he would have still made the loan. Referring to the financial statement the following testimony was given (page 162).

"Q. You actually remember, and you do not look back upon the thing and say, 'Now, that must be so, because I usually do it.' But you actually *remember made* that statement? A. I actually remember it, sir, because the thing impressed itself upon my mind. It was the first experience that I ever had outside, with the other institution. It shocked me; on account of the fact, secondly, that he was engaged in a business that was hazardous, and that everybody knows was hazardous." He further tes-

tified that to the best of his recollection the amount credited was $10,000, he further testified as follows:

"Q. Mr. Anderson, do you remember Mr. White showing you a note to the Seaboard Bank for $15,000? A. No.

Q. You don't remember it? A. No.

Q. Do you remember his showing you that note, and then showing you the back of it, and how it had been shaved $300? A. No, I don't remember that.

Q. That it had been shaved? A. That it had been shaved. I don't remember it.

Q. You don't remember his showing you the note? A. No, the only things that have impressed themselves upon me in that transaction is the treatment that he said he had received from the institution, and the hazardous nature of his business.

Q. Do you remember this, Mr. Anderson: Do you remember Mr. White showing you that note and your asking Mr. White if Mr. Tyson was a personal friend of his, and Mr. White saying 'Yes,' and then you saying, 'Did he loan you that [34—16a] much,' looking at the $15,000 note, and then saying to Mr. Moulton and Mr. White both, or to Mr. Moulton, 'Well, if he can let him have $15,000, I guess we can go him a little better; we can go him a little better?'

A. I never made such a statement. It is perfectly ridiculous to think of basing my judgment on what Mr. Tyson would do."

It appears that on the day the bank granted the loan the bankrupt withdrew from the Bank of California, $8,500. The testimony does not show the

items for which this money was disbursed, a portion of it was no doubt used to cover paper placed with the Seaboard Bank which had not been honored when due. The testimony of Mr. Hall shows that the bankrupt's direct indebtedness to the bank of December 31, 1912, was $5,375, the total of indebtedness charged to him by the bank at that time was $14,071.65, which would leave $8,595.35 represented by paper charged to his account, for which paper upon being honored the bankrupt would be entitled to a credit.

What amount of paper was carried by the Seaboard Bank on April 19, 1913, the day of the loan, I am unable to ascertain form the record. The bankrupt upon the general examination stated that he intended to use the credit obtained from the bank to get rid of the Seaboard account, but, when he got back to his shop there was an abundance of "No Sufficient Fund" checks turned out by the Seaboard Bank, that he was obliged to pay these checks and other things, that were necessary to pay. He also states that on that day attachments were made or were going to be made.

The bankrupt seeks to give the impression that this condition of affairs was a surprise to him and that he [35—17] was prevented by such condition from using the money to pay the Seaboard's claim, according to his testimony, he did not consider he was indebted to the bank for the paper discounted until the paper had been dishonored. The statement that he intended to pay the bank's claim could only refer to his direct account with the bank.

It is incredible that threatened attachments and claims to the extent of $8,500 came by surprise and first became known to him on the same day of the loan and immediately thereafter. The "N. S. F." checks and the attachments show that his affairs were very pressing at that time. I am satisfied that had the Bank of California extended him a credit of $20,000 as claimed by him, he would have obtained from the bank the sum necessary to liquidate the Seaboard account, especially, as he represented to the bank that he desired to transfer his account from the Seaboard to the Bank of California. I refer to this testimony as it goes to the credibility of the witness. I also do not credit his testimony that the statement of his financial condition was not in the hands of the bank before the loan was made. It is my conclusion that the bankrupt's limit of credit with the Bank of California was $10,000, and that the bank loaned him this sum relying upon the truthfulness of the written statement of the bankrupt's financial condition furnished to the bank by the bankrupt. (Marked "Trustee's Ex. A.")

As to the bills and accounts payable by the bankrupt on December 31, 1912, the record shows the following: By stipulation the following debts are admitted to have been owing by the bankrupt at that time: [36—18]

Sutro & Co	$ 600.00
W. H. Stephens (Moulton Hill Vineyard)	500.00
Dr. Mascero	51.50
C. C. Moore & Co	92.50

George Roeth	3200.00	
H. Ravn	1500.00	
Thompson Bros.	57.28	
Baker & Hamilton	32.51	
Western Grain & Sugar Products Co.	160.00	
W. E. Cashman	2950.00	
Weidenthal Gosliner Electric Co.	16.23	
Aitken & Aitken	50.00	
Pacific Tool & Supply Co	22.95	9232.97
Counsel for the bankrupt also concedes as owing the account of Bloomberg Bros	3620.00	
There was also owing to the Seaboard Bank on direct account.	5375.00	
And to ——— Pantosky	6000.00	
And to Walter Linforth	2550.00	17545.00
Making a total of		26777.97

All of the foregoing accounts I find were owing by the bankrupt on December 31, 1912. There are certain other accounts, to wit:

H. Blandies	$ 500.00
——— Davison	2625.00
Oakland Bank of Savings	1000.00
Total	$4125.00

As to the accounts the record shows the following testimony:

As to the paper discounted with the Seaboard National Bank he testified (page 117) that if he took paper or acceptances payable in 30 days or 60 days or 90 days for material he would receipt the bill and would take the paper to the bank and discount it to get the money and apply it to my loan.

"Q. As for as you were concerned, how did you consider the transaction? Do you understand the question?

A. I considered the transaction closed, until the party giving me the paper dishonored it. If he did, I would hear from it.

Q. And on December 31, 1912, it may well have been then that you owed the Seaboard a considerable amount for acceptances [37—19] that had not been paid?

A. I may have owed the $50,000, if we take the discounts into consideration.

Q. Why didn't you, Mr. White, consider this as liabilities in your statement?

A. Well, I didn't consider them as assets, either.

Q. In other words, if I understand you correctly, you neither listed them as liabilities or as assets?

A. No, sir."

As to the indebtedness to the Oakland Bank of Savings upon the $1,000 joint note with his wife he testified that this note was Mrs. White's, that he signed it as security for Mr. Roth, and that he did not include this indebtedness in the statement to the bank because it was not his indebtedness. As to the indebtedness owing to Mr. Pantoskey, $6,000, he testified that that was correct as to the $6,000 it was not

included in the Bank of California, because they were to give Mr. Pantoskey a mortgage for that money which he subsequently got, that he had an agreement with Mr. Pantoskey that if he did not pay him within 48 hours or something similar to that, some very short time, on which I really expected to pay, we would give him a mortgage on this property that we had (page 114), that no debts which were secured by real estate were included in the statement to the Bank of California.

He denies owing to Mr. L. M. Davison $3,000. He stated that he might have owed him a few dollars. (Pages 117–18.)

As to the claim of Mr. Linforth in the sum of $3,000 less a credit item of $950, which was not included in the statement to the bank, he stated that he had never received a bill from Mr. Linforth and that he did not know how much he owed to him or how much he owed any attorney [38—20] (page 118), that he had a great number of attorneys and that he had never received a bill from any of them with the exception of Mr. Cashman, that he did not figure any of his attorneys' claims because he never knew they were claims, for instance, what I remember that Frank Murphy had a bill against me for $3,500, and it was settled by my giving him $200 cash in hand. He told me he would take $200 to square it up. I never figured in any liabilities as to attorneys' fees (page 119).

The claim of H. Blandies, $500, has not yet been passed upon in the bankruptcy proceeding. The claim of Davison, $2,625, was settled by the trustee

by paying to said creditor $50. These claims together with the Oakland Bank of Savings, $1,000, are not included in my findings as to the total of accounts payable as there is doubt as to the extent of these liabilities. Bills payable to the bank are given in the financial statement at $10,900. The bankrupt testified to the effect that he thought this was a mistake and that such account included some bills payable, that he did not owe that amount to the banks at that time. The bankrupt probably should be held to the amount stated in his statement, $10,900 as payable to the banks, however, I have given him the benefit of every doubt where the record does not satisfactorily explain the transaction. It is probable that he was indebted to the bank for paper which had not been honored, but if he is charged with this he should then be credited as an asset with the amount of the paper dishonored assuming that the paper would ultimately be paid. This cannot be ascertained from the record. [39—21]

JACOB PANTOSKEY.

Mr. Jacob Pantoskey testified that in the month of December, 1912, Mr. White was indebted to him in the sum of $6,000 for money loaned, that the loan was made about the 3d day of December, 1912, that after the making of the loan, about 1914, there was a mortgage made to secure this loan, that the loan was evidenced by a note endorsed by the wife, that at the time the loan was made that there was no arrangement for the security of the note, that Mr. White owed him $11,000 and that he had been paid

back $5,000 (page 25), and that on December 31, 1912, Mr. White owed him $6,000.

ROY B. BAKER.

Mr. Roy B. Baker testified that he is loan teller in the Oakland Bank of Savings and produced a note dated Feb. 7, 1912, for $2,000, signed "Lena White, H. S. White" payable to the Oakland Bank of Savings, and stated that the sum of $1,000 was owing said bank on December 31, 1912, upon said note (page 19), that he did not know whether Lena White borrowed the money and Mr. White signed as surety, or whether Mr. White and Lena White signed as surety, or whether both borrowed the money.

The bankrupt's explanation as to why the $6,000 owing to Pantoskey was not included in the financial statement to the effect that he did not include debts for which real estate security was given, and that he had promised to secure Pantoskey by mortgage, which he afterwards did, is not satisfactory. The mortgage was not given until [40—22] 1914. Mr. Pantoskey directly contradicts the bankrupt that the mortgage was promised *as* the time the loan was made. The Pantoskey account was originally $11,000. The bankrupt's statement that he expected to pay that back in 48 hours or give Pantoskey a mortgage, I do not credit, in view of Mr. Pantoskey's testimony and the fact that no mortgage was given until 1914.

Mr. Linforth's claim amounting to $2,550 was a claim of such consequence that it is incredible that the bankrupt had no idea as to what he was owing

to Mr. Linforth. He should have ascertained it and placed it in his statement.

As to the stock in trade the record shows the following testimony:

The bankrupt testified that he arrived at the value of his stock by taking up stock, that such stock was taken up, some of it by actual weight, some of it by cost and some of it by value, that the price of second-hand machinery depends on all kinds of circumstances, upon the market, upon how quick new goods could be delivered, upon how bad a man needed the goods and how bad you wanted to sell them and how bad you needed the money (page 110). Asked as to how his stock in trade on hand on December 31, 1912, compared with the amount of stock on hand at the time of the bankruptcy, he answered, "There might have been a little bit more in 1912 than there was at the time of the bankruptcy, but that he didn't remember" (page 115).

It appeared that the bankrupt had certain litigations which terminated about 1908 and he testified (page 66, Gen. Tes.) that after the litigations he began to dispose of the stock, that after the litigation he had to begin again, [41—23] that the stock began to increase.

"Mr. SHUEY.—Q. What was the condition of your stock at the time of the ending of the litigation in 1908?

A. As to the quantity of the assets and the volume?

Q. Yes. Was it small or large at that time?

A. It was not as great as it was before the litigation, but I had yet quite a lot of stock.

Q. Was it smaller?

A. It was a little smaller; yes, sir.

Q. How does it compare with the stock on hand at the present time? Had it been getting smaller or larger?

A. I believe there is more stuff there now.

Q. I think your stock you testified the other day that you greatly increased in that line of business?

A. Yes.

Q. That was one of the troubles with the business?

A. Yes, there is more stuff there now then there was when we dissolved."

In the financial statement under the question—What is your usual date for taking inventories, the bankrupt inserted December 31. Concerning the taking of inventories the bankrupt upon his general examination testified as follows (page 22):

"Q. Did you take stock in your business personally yourself?

A. I would go over it casually. I would go over it about twice a year.

Q. What record did you keep of the stock?

A. It is the hardest thing to keep record.

Q. How did you take it?

A. We took a tab and taking the value, that is taking into consideration what it cost, what the probable return would be for it, then I struck an average, unless the stuff was absolutely valueless, and then I estimated the weight and put it down as scrap. [42—24]

Q. Then would you figure out yourself as the value of the property?

A. The fair value of the property there, yes, sir."

As to the manner of taking inventories he has stated the same at page 60, Gen. Testimony. At page 177, he testified as follows:

"Q. How many times have you taken stock since 1908 when you dissolved partnership with Mr. Lauenstein?

A. Whenever a banker would call or Bradstreet's or Dun's.

Q. How long would it take you to take up stock?

A. I have explained it in a previous matter. I will repeat it again, that by reason of my being the only salesman in the place, the only one that knew the material, what stock I had, and knew the price, and so forth, it was a very hard matter. I would go out in the yard and take up stock on these glued tabs, and then I would be interrupted by somebody, and I would put that tab in my pocket until such time as I had a few moments leisure, and then I would go back again, and when I had four or five of those—I would keep them in the Burroughs adding machine, and I would have it right in front of me.

Mr. SHUEY.—Q. Did you take these inventories at regular intervals?

A. No, I had no special time, only when I had a partner."

Mr. William R. Pentz, trustee herein, testified that the amount realized from the sale of the property of the bankrupt's stock in trade was $18,217.

SAMUEL COOPER.

(Page 92.)

Mr. Samuel Cooper testified that he was in the

second-hand machinery and pipe business for 14 years and knows [43—25] Mr. White and was acquainted with him on December 31, 1912, that he used to go in Mr. White's place of business and was familiar with the stock, and that he was able to place an approximate valuation upon such stock, and placed the same between the values of 30 and 35 thousand dollars. Upon cross-examination he stated that he could not read or write, that he has a partner that attends to the business, that they incorporated with $75,000 and had the cash money to incorporate, that Mr. White's stock consisted at the time of second-hand machinery and it was lying like a pile of junk (page 94) that he was in Mr. White's place of business when the business failed, nearly a year ago and in every day pretty near, that he now has a bigger stock than Mr. White and that it is worth $75,000. When asked how he estimated those figures 30–35 thousand dollars, he stated:

"Well, you see I go out and buy a pile of junk, even I buy from the Government, I buy it by the pile.

Q. You estimated Mr. White's material that way?

A. Yes, I estimated it that way. I buy stock that way. Most of the time I buy it by the lump.

Q. I see. And you estimated Mr. White's value of the stock by the lump?

A. I looked at it, and he used to brag what he estimated it at.

Q. To yourself? A. Yes, to myself.

Q. As junk?

A. I figured it as second hand, as junk.

Q. That is the way you figured it?

A. Well, we figured it all the time as junk" (page 96).

J. C. ERNSBERGER.

Mr. J. C. Ernsberger testified that his business is of the Lansing Company, of Lansing, Michigan, dealing in [44—26] machinery, wheelbarrows and warehouse trucks, and that he has met Mr. White and was in his former place of business (page 88), about December, 1912, possibly a half a dozen times, that he noticed the amount of stock he carried in a general way, that he has never been in the second-hand business, though he has been in the machinery business exclusively about nine years and estimated that the value of the stock in Mr. White's place of business as in December 31, 1912, at from 25 to 35 thousand dollars, that is, the general values of the second-hand machinery being, from one-third to one-half of the new; about the amount of machinery that would be contained in a building of the size as I remember that now, that the same quantity of machinery valued new would amount to about 80 or 100 thousand dollars.

JOHN JARDINE.

Mr. John Jardine testified *that has* been in the machinery business for about 24 years handling new and second-hand machinery and is familiar with the values of second-hand machinery, that he knows Mr. White, the bankrupt, very well; very favorable, and knew his place of business and was there during the years of 1912–13 occasionally, and was familiar in a general way with his stock in trade in December, 1912, that he was one of the

appraisers appointed by the referee herein to appraise the stock of the bankrupt, and that the stock in 1912 was practically the same line of stock (page 52); that in 1912–13, he was at the bankrupt's place of business 10 or 12 times probably, that he did not look over the whole stock, but knew practically what he had, that it would be [45—27] necessary to examine the whole stock to determine its value (page 54). Referring to the appraisement of the property in the bankruptcy case, he stated that the appraisement was made on a basis of his opinion as to what it would bring at a private sale in order to close out the stock within say 12 months. The appraised value of the stock on hand at the time of bankruptcy is $30,143.95.

P. A. PEABODY.

Mr. P. A. Peabody testified that he is in the machinery business and has been engaged therein for twelve years, handling all kinds of machinery, that he has done adjusting for insurance companies on machinery losses, and that during most of the time he has handled second-hand machinery, that he was employed by the trustee of the estate of said bankrupt for disposing of the bankrupt's stock and was engaged in disposing of it about ten months, that he was not familiar with the business of the bankrupt prior to that time, but has been in the place of business in 1912, but does not know definitely about his stock in 1912, that as to the value of the stock of the bankrupt at the time of the bankruptcy, it was his opinion that if sold in the ordinary course of business, it would be worth at the very most, about

$60,000, and that at the best possible market value of machinery of that class.

It is my deduction from the evidence that the stock carried by the bankrupt at the time of making the financial statement was about the same in quantity and value as on hand at the time of the bankruptcy. The evidence indicates [46—28] that it was less rather than more at the former time. The bankrupt's stock in bankruptcy proceedings was appraised at $30,143.95 and sold for $18,217.00. The stock was sold by the trustee mostly in small lots under an order authorizing him to conduct the bankrupt's business, and the sale covered a period of several months. It is my opinion from all the evidence in the case, that the value of the bankrupt's stock at the time of the making of said financial statement could not have exercised $35,000, and I so find. The character of the stock is such that it is very difficult to place an exact valuation thereon, but the placing of a valuation of $122,000, is grossly excessive and false.

BOOKS.

As to the books kept by the bankrupt, the record shows the following:

On July 6, 1914, upon the bankrupt's general examination the bankrupt concerning books kept by him testified as follows (page 66):

"Q. What books did you keep in your business?

A. I didn't keep a very elaborate set. I never do when I am by myself.

The REFEREE.—Q. Just state what you kept.

A. I had a ledger, a sale sheet book which would

serve as a day-book, you might say, and that is about all, and the money that we paid on bills, why that was just as they came in, and we had money that we paid out."

Certain books of account turned over to the trustee were brought into court and shown to the bankrupt, who thereupon testified that there were other books which he kept which were not produced, that there were some 50 or over [47—29]' of sale sheets books which were not produced, he also referred to a little receipt-book which was produced and said that this little receipt-book was about one of about a hundred, roughly speaking, for goods delivered and moneys turned over (pages 73–74) and at page 78 he testified that the other books referring to the sale sheets, amounted to a small size wagonload of them, that there were return check, book covers, stubs of checks, bill files innumerable and other miscellaneous bills, that he had a very large safe in his place of business which stood about 6 feet high that was full of books, that there was a vault in which he kept all the valuable metal and books that he had no particular box for and that were valuable enough not to destroy, that there was a regular office safe that was under lock and key in which he kept books and papers of value that he might wish to refer to any moment that was full of books, that the office safe did not keep all the books pertaining to his business, it was inadequate to carry them, that there was a flat top desk with drawers in it and a little roller-top desk arranged with drawers in which he kept notes and all the big busi-

ness which he did with the bank. "They were really of no value, but were kept for my own satisfaction and comfort, whenever I wanted to find something," that all bills payable would be in the form of bills on file and just as soon as they were removed from that file and placed on the paid file. "All those, they are missing here at the present time, paid and unpaid, that if he wanted to ascertain the amount of his liabilities he would just run it upon his adding machine from the bills payable. There was a book for labor expended in the form of a time-book, a number of [48—30] them, probable a hundred of them, that showed all the moneys paid out for labor. There was a book for horse feed and horseshoeing, a number of them, in fact. There was books for all the outstanding jobs, for any particular job that we did, we would have one particular book for that particular job, whether we used one page or the whole book. Those are not in evidence. The books were kept by either one of the stenographers with my help Miss Knowland or Miss Wichman."

On his general examination the bankrupt further testified, page 99:

"Mr. DORN.—Q. Will your books show that money borrowed? A. From the Bloombergs?

Q. Yes. A. I don't think it will.

Q. Why won't it?

A. There is no books to show what I borrowed from the Seaboard or the International or anybody else.

Q. There is no book to show anything that you borrowed?

A. I don't think there is. That is part of the record.

Q. What is there that will show?

A. Documents in the office.

Q. Are there documents in the office that will show money borrowed from the Bloombergs?

A. I think there are.

Q. There are books in the office that show money borrowed from the Bloombergs?

A. All money appertaining to the business.

Q. I mean this particular transaction.

A. That as well as anything else.

Q. There are accounts relating to the Bloomberg business? A. Yes.

Q. Where are they? A. In the office. **[49—31]**

Q. Don't you know where they are in the office?

A. I don't know. Maybe they are in the safe. Maybe they are in the safe now.

Q. You had no regular place for keeping such things, had you?

A. Well, my safe. I had them in the safe, and when the safe got plumb full, I would keep them in the larger safe, when I would keep them in a drawer, but I was not very careful about them.

Q. In what part did you keep those records?

A. I kept the bills in the drawers and in these here canvas envelopes that double up."

LESTER HERRICK.

Mr. Herrick testified that he is a member of the firm of Lester, Herrick & Herrick, certified public

accountants. His qualification as an expert accountant was admitted by attorney for bankrupt. On page 85 Mr. Herrick testified that he could not find anything relative to a financial condition of H. S. White from the books he had examined and that he could not ascertain the total liabilities of H. S. White on December 31, 1912, nor the amount of money on hand or cash in bank on that date. On being shown the bankrupt's ledger he stated that it contains accounts of people to whom charges had been made and to whom credits were given, and contains no entries subsequent to October, 1912, and the witness further states that all books which had been marked for identification and which were fully examined by him disclosed nothing whatever as to when transactions of any character subsequent to October, 1912, with the exceptions of a small number of possibly half a dozen small check [50—32] books which showed transactions of deposits in bank, and evident withdrawals as indicated by the check stubs up into some date in 1914. They are not continuous and do not appear to be complete, that is, as to a record of all such transactions (page 87).

"Q. Do you find any reference in these books to any of your books which you have heard Mr. White relate are missing?

A. It is possible, and not improbable that these numbers showing as reference numbers in the ledger, refer to the foundation of the entry as being probably sales sheets of such a character as are in this book." (The ledger contains entries subsequent to

October, 1912. The witness is mistaken as to said date.)

FREDA WICHMAN.

Freda Wichman testified that she was in the employ of Mr. H. S. White as stenographer and bookkeeper and general office help about four or five months before his bankruptcy, that as far as she could remember there was a sales book, sales sheets, and when they were shipped out, the sales sheets were transferred to a little book and the sales were posted direct to the ledger, which is the ledger produced in court (page 98). As to whether there were other books there which the witness did not see upon the table in court she stated: "Not that I can remember. It is so long ago. I remember no other book with the exception of a petty cash-book."

Upon the cross-examination, upon being shown sales sheet "Ex. No. 1," and asked, "Now you didn't mean to say that these were the books, these particular books kept, but you mean to say that they were books like this? Am I correct? A. Yes.

Q. Books like this?

A. Yes, and that she didn't remember [51—33] how many of such sales books there were, that they had a bill spindle upon which the bills were placed.

Q. Did you make any entry of these bills in any book? A. No.

Q. When those bills on the spindle were paid, what was done with the receipt? I will ask you first, was a receipt taken when one of those bills was paid?

A. Yes.

Q. Then what was done with the receipt?

A. There was a receipt file somewheres, and they were filed away (page 102).

The testimony conclusively shows that the bankrupt's financial condition cannot be ascertained from the books and papers which he has produced and turned over to the trustee. The testimony of Miss Wichman, who was the bookkeeper for three months before the time of the filing of bankruptcy, indicated that with the exception of a cash-book all the current books kept by him were turned over to the trustee. Her testimony and also that of the bankrupt shows that the bookkeeping was done in a very careless manner. The bankrupt's statement of having a wagonload of books, which were not found by the trustee, I do not credit. What became of such books if they existed is unexplained. While the burden is upon the trustee to prove his charge, the bankrupt is not to be excused for failing to account for the absence of the books which he claims to have had immediately preceding the bankruptcy. The point as to whether the failure to keep books of account from which his financial condition could be ascertained was with intent to conceal his financial condition, is the only point to be determined on this question.

As to the construction to be given the section of the act in question, I desire to quote the following from a [52—34] recent case reported in Advance Sheets of American Bankruptcy Reports, of Nov., 1916, page 734, matter of Chass, U. S. District Court, Western District of Pennsylvania:

"Looking at the testimony in every light most favorably to the bankrupt, this court is unable to agree with the learned referee in his conclusions. The necessity of keeping books in a mercantile business such as that in which the bankrupt was engaged, must be apparent to everyone of intelligence. It must have been apparent to him because he had kept books in the business in which he had previously been engaged. The bankruptcy law itself contemplates that books should be kept by those who might benefit by its provision where such books were necessary factors in the conducting of business. Had it not been so, the failure to keep books would not have been expressed as a reason for refusing a discharge when coupled with an intent to conceal the merchant's financial condition. It is apparent, too, that the 'intent' denounced by the present law is not intensified by the word 'Fraudulent' as it was in the act as originally passed. The reason for the omission of the word 'fraudulent' in the amendment to the act cannot be deemed as purposeless. The effect is to relieve the objecting creditors from the proof of fraudulent acts which disclose 'fraudulent intent.' As the act stands today, it is but necessary for the creditor to prove the failure of the bankrupt to keep books of account where such books of account were necessary and proper. And when satisfactory evidence of such fact is produced, the law determines the intent to have existed because the bankrupt must be presumed

to have intended to conceal his financial condition if such were the natural and probable consequences of his failure to keep books. Even in the criminal courts, where intent must be proved by the government, it is in many cases announced as a doctrine of the law that every man is presumed to have intended the natural and probable consequences of his act.

There is nothing in the testimony before the referee which must be held to be sufficient to rebut such presumption in the case at bar."

The interpretation given to the section of the act in question in this case is more strict than in any case with which I am familiar. Much leniency has been shown bankrupts in most of the reported cases, especially, where the bankrupt appeared to be an ignorant man, his business a small one, and he was able to satisfactorily explain his affairs. It may be that the correct ruling is as stated in the quotation, viz., that the intent should be inferred unless there is testimony sufficient to rebut **[53—35]** such presumption, as to the usefulness of the books kept by the bankrupt to enable the creditors to determine his financial condition, the bankrupt may as well have kept no books. In the present case the bankrupt is intelligent, shrewd and of plausible speech. He convinced the officers of the Bank of California that he was a man of trust-worthy character. His plausible and disingenuous testimony is more effective when heard than when read, but, it is unsatisfactory. In light of the disclosed condition of his affairs the characterization applied by the court to

the bankrupt's testimony in the case In re Leslies, 119 Fed. 410, is applicable here, viz.: "His statements are destitute of those elements which command confidence and justify judgment." He testified that there were no books to show the moneys he borrowed from the banks or anybody else, and claimed that he kept some notation thereof in his desk, but which was not among the papers found by the trustee and has not been produced. I cannot accept the conclusion that the bankrupt's failure to make entry in his books of these important transactions was without motive." It is my conclusion that the bankrupt, has, with the intent to conceal his financial condition, failed to keep books of account or record from which such condition might be ascertained. I will consider one further contention of counsel for the bankrupt because of the importance attached thereto in counsel's brief.

It appears that the first note given by Mr. White for the loan of $10,000 April 19, 1913, fell due in 90 days. On July 18, 1913, he executed a new note to the bank of $10,000 payable in 90 days and the bank placed $10,000 to his credit upon the new note thereupon he drew his **[54—36]** check for $10,000 with which he paid his old note and thus in the same manner new notes were given and the preceding note was retired. The last note, being the fisth note executed to the bank for $10,000 was executed April 20, 1914, payable one day after date. The preceding note was retired by drawing his check in the amount of the old note with interest. On May 19, 1914, he was adjudged a bankrupt. Counsel for the bankrupt

contends that the extension of credit to the bankrupt must be taken as of the last date, April 20, 1914, for the reason that the previous obligations were paid by checks drawn by the bankrupt on the execution of each new note. The last note was about 16 months after the granting of the original loan, and counsel argues that the financial statement in question given some 16 months prior to the execution of the last note, was too remote to warrant a finding that the bank relied upon said financial statement when granting the bankrupt a credit upon his last note on April 20, 1914. Counsel cites several authorities to the point that a credit extended at a remote date from the giving of the financial statement justified the conclusion that the credit was extended without reliance upon such a statement. He also refers to the case of In re Waite, 223 Fed. 853, which case decided the converse of the proposition involved here. In that case as here discount of the new note and payment of the old were alike made without any actual currency changing hands. The false statement in that case was made upon the giving of the new note and the court held that the new note amounted to a new credit, and denied the discharge, and counsel argues therefrom that the credit from the Bank of California must be taken **[55—36]** as dating from the last note April 20, 1914, and that the financial statement given as of December 31, 1912, was too remote to be considered as a basis of the extension of such credit. I fully agree with the court in the case of In re Waite in holding the bankrupt to the form which they voluntarily gave to their

dealings with the bank. In form there was a payment of an old loan, the contracting of a new, and to induce the bank to grant them this extension of credit they gave a new financial statement at the time of the transaction, which was false; but it does not follow that the bankrupt cannot also be held to his original false statement given at the time the loan was first created. In the case at bar, a loan of $10,000 made April 19, 1913, had not been repaid to the bank and it was the same obligation that was the subject matter of each of the five notes. The system of the bank in carrying this credit I deem entirely immaterial.

I find that the charges against the bankrupt have each and all been proven and recommend that his discharge be denied.

Dated December 28, 1916.

Respectfully submitted,
ARMAND B. KREFT,
Referee in Bankruptcy.

(The following pages contain a list of exhibits and papers transmitted.)

[Endorsed]: Filed Dec. 28, 1916, at 4 o'clock and 45 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. **[56—37]**

(Title of Court and Cause.)

(Order Disregarding Specifications of Objection to Discharge of Bankrupt and Order Granting Discharge.)

WILDER WIGHT, Esq., Attorney for Bankrupt.

CLARENCE A. SHUEY, Esq., and W. DORN, Esq., Attorneys for Trustee.

The bankrupt regularly made application for his discharge. The trustee appeared and filed specifications in opposition thereto. The matter was then referred to the referee to hear and report on the objections. He has reported recommending that the objections be sustained the *the* discharge denied. Before the referee, and at all proper times the bankrupt has claimed that the specifications should not be considered, for the reason that the trustee was never authorized at a meeting of creditors called for that purpose to interpose objections to his discharge. The facts as gathered from the referee's report are as follows:

On April 27th, 1915, the referee sent out the following:

"NOTICE TO CREDITORS.

To the Creditors:

Take notice, that William R. Pentz, trustee herein has filed his Second Account, and that at the office of the undersigned, Room 202 U. S. Courthouse and Postoffice Building, San Francisco, California, on May 17th, 1915, at 10 A. M., said account will be examined and passed upon, and a dividend declared,

and further take notice that said trustee has filed herein [57] a petition for an order authorizing him to oppose the discharge of said bankrupt, which will be heard at the time and place aforesaid.

Dated April 27, 1915.

ARMAND B. KREFT,
Referee in Bankruptcy."

It does not appear that any creditors attended in response to this notice, the referee's report reciting only as follows:

> "At the time set for the hearing no creditor appeared in opposition to the making of the order authorizing the trustee to oppose discharge."

The trustee was not authorized by the creditors to oppose the discharge, but was authorized by order of the referee only. The power to authorize an opposition to a discharge is not lodged with the referee, but with the creditors,—"the parties in interest." The language of the statute is "Provided, that a trustee shall not interpose objections to a bankrupt's discharge until he has been authorized so to do at a meeting of creditors called for that purpose." This language has been held to mean "authorized *by the creditors* at a meeting held for that purpose." If the creditors had met in pursuance to the above notice and had at such meeting authorized the trustee to oppose the bankrupt's discharge, I would not be disposed to hold such authorization unwarranted because of any defect in the form of the notice. But it is one thing to say that the trustee "is authorized by the creditors" and another thing to say as here that

no creditor appeared in opposition to the making of the order authorizing the trustee to oppose the discharge." I can find no warrant anywhere for the making of such order by the referee. As above stated it does not even [58] appear anywhere in the record that a single creditor was present at the time and place designated in the notice. All that does appear is that there was no creditor present objecting to the making of the order by the referee. In my judgment the appearance by the trustee in opposition to the bankrupt's discharge was absolutely without warrant, as wholly unwarranted as if he had appeared of his own motion and without an order of the referee having been made at all.

It is urged, however, that the provision of the statute above quoted is for the protection of the creditors and not for the protection of the bankrupt; that it is only a question of costs and not of authority. I do not so read the provision. The bankrupt is entitled to his discharge unless opposed by a party in interest. It is not every volunteer that may halt his discharge. The trustee is forbidden to oppose a discharge except when authorized so to do by the creditors. Until so authorized he is a mere volunteer, because not a party in interest. Any creditor may oppose a discharge, or the creditors acting together may authorize the trustee to do so. But unless the creditors either singly or collectively desire that a bankrupt's discharge be opposed, such discharge must be granted. Neither the trustee as such nor the referee as such is authorized to substitute his desire or judgment for the desire or judgment of the

creditors in this regard. And it is a very material matter to the bankrupt if to those authorized by statute to oppose his discharge shall be added by construction the trustee and the referee. So that he is materially interested in seeing that his discharge shall be opposed by those only [59] who are by statute authorized to do so. Even now, after extended hearings before the referee, and with elaborate briefs of counsel before me, I am unable to determine from the record that a single creditor is or ever was in favor of opposing the bankrupt's discharge.

The objections of the bankrupt to any hearing upon the specifications filed by the trustee, on the ground that they were unauthorized, were opportunely made, and should have been heeded. So far as appears there is no creditor interested in this proceeding, and for that reason the specifications will be disregarded, and the discharge granted.

January 23d, 1917.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 23, 1917, at 5 o'clock P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [60]

(Title of Court and Cause.)

(Order of Discharge.)

WHEREAS, H. S. White, of the city and county of San Francisco in said District, has been duly adjudged a bankrupt under the acts of Congress relating to bankruptcy, and appears to have con-

formed to all the requirements of law in that behalf:

It is therefore ORDERED BY THIS COURT, that said H. S. White be DISCHARGED, from all debts and claims which are made provable by said acts against his estate, and which existed on the 4th day of May, A. D. 1914, on which day the petition for adjudication was filed against him; excepting such debts as are by law excepted from the operation of a discharge in bankruptcy.

WITNESS, the Honorable M. T. DOOLING, Judge of said District Court, and the seal thereof, this 23d day of January A. D. 1917.

W. B. MALING,
Clerk.
By Lyle S. Morris,
Deputy Clerk.

[Endorsed]: Filed, Jan. 23, 1917, at 6 o'clock P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. **[61]**

(Title of Court and Cause.)

(Notice of Motion to Vacate Order Granting Petition for Discharge.)

To H. S. WHITE, Bankrupt Herein, and to His Attorney, WILDER WIGHT, Esq.:

You and each of you will please take notice that the trustee in the above matter will, on the 3d day of February, 1917, at ten o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of the above court, Division No. 1 thereof,

at San Francisco, in the Northern District of California, move said Court for an order vacating the order of the said Court made herein on the 23d day of January, 1917, granting said bankrupt a discharge, and for a further order referring the matter to the referee for the purpose of certifying and finding as to the facts constituting the authority of the trustee to oppose said application for said discharge, and for the purpose of hearing and receiving any further proof that may be required in order that said referee may make such certification and finding relating to the authority of the trustee to oppose the discharge herein.

Said motion will be made upon the ground that the trustee was in fact duly authorized to oppose said discharge **[62]** and that any failure of the referee to make such certification and finding was due to inadvertence and excusable omission on his part.

Said motion will be based on the records of this court and of the referee, testimony taken, affidavit of Clarence A. Shuey hereto atached, and such other papers as have been considered by the Court or referee in this matter.

Dated January 27, 1917.

CLARENCE A. SHUEY,
WINFIELD DORN,
Attorneys for Trustee. **[63]**

(Title of Court and Cause.)

United States of America,
Northern District of California,—ss.

(Affidavit of Clarence A. Shuey in Support of Motion to Vacate Order Granting Discharge.)

Clarence A. Shuey, being first duly sworn, deposes and says: That he and Winfield Dorn, his associate, have been at all times herein, and now are, the attorneys of record for the trustee in this matter.

That pursuant to the instructions of the creditors, the affairs of the bankrupt were thoroughly investigated by the trustee and by affiant and his associate as attorneys for the trustee. That after such investigations, creditors holding a majority in number of all claims in this estate expressed the desire to have the trustee take such steps on behalf of all the creditors as might be necessary to oppose any application made for a discharge by the bankrupt.

That owing to the large number of requests which the trustee and his attorneys received from creditors, the said trustee duly petitioned this Court for authorization to make opposition to the application for discharge filed by the bankrupt.

That thereafter, as appears from the records of this court, and the certificate of the referee on file [64] herein, notice was sent by the referee to all creditors of the estate entitled to notice that the trustee had filed said petition and that the same would be heard at the office of the referee, Room 202, U. S. Courthouse and Postoffice Building, San Francisco, California, on May 7, 1915, at ten A. M. That at said

meeting, at said time and place, a large number of creditors were present in person or by their respective attorneys in fact, to wit, creditors representing a majority in amount of all allowed claims, and, affiant verily believes, a majority in number of all allowed claims. That at said meeting the matter of the trustee's application for authorization to oppose said discharge was heard and considered by the creditors and all creditors present or represented at said meeting announced and declared themselves to be in favor of authorizing the trustee to oppose the said discharge. That thereupon the referee asked if there was any creditor present who objected to such authorization of the trustee, and no objection being made, and all creditors assenting thereto, the referee thereupon made an order expressly authorizing the trustee to oppose the said discharge.

Affiant further deposes that at the hearing before the referee of the opposition to the said discharge, and at the time that counsel for the bankrupt objected to the taking of testimony and the proceeding with the said hearing on the ground that the trustee was not legally authorized to oppose the said discharge, affiant stated that the trustee had been authorized at a meeting of the creditors as above set forth, which statement was confirmed by the referee.

That counsel for the bankrupt accepted said statement so made and confirmed without question, and, as affiant [65] understood and believes, as proof of the fact, and the proceeding continued without an attack being made upon said statement or proof.

That as will appear from the records in this case, no issue was raised by the answer to the specifica-

tions of opposition on the ground that the trustee was not legally authorized.

That affiant further deposes that he verily believed that the authorization to the trustee to oppose the discharge was given and conferred in the manner provided by law and established in the practice in bankruptcy.

CLARENCE A. SHUEY.

(Duly verified.) [66]

(Title of Court and Cause.)

Order Re Service of Notice of Motion to Vacate.

It is hereby ORDERED that the time within which the foregoing notice of motion may be served is hereby shortened so that the notice given shall be at least five days before the day named for the hearing of said motion.

Dated January 27, 1917.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Jan. 27, 1917, at 5 o'clock P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [67]

(Title of Court and Cause.)

Affidavit of Winfield Dorn (in Support of Trustee's Motion to Vacate).

State of California,
City and County of San Francisco,—ss.

Winfield Dorn, being first duly sworn, deposes and says: That he is and at all times herein mentioned

has been, and now is, an attorney associated with Clarence A. Shuey as attorney for the trustee of the above estate; that affiant has been familiar with the administration of the above estate throughout and was present with his associate on May 7, 1915, at a meeting of creditors held pursuant to notice given by the referee and called for the purpose of hearing the second account of the trustee and the petition of the trustee for authority to oppose the application of the bankrupt for a discharge. That at said meeting, affiant, on behalf of certain creditors whom he represented and holding powers of attorney therefrom, announced and declared in favor of authorizing the trustee to oppose the application of the bankrupt for a discharge herein. That at said meeting, affiant's associate, after making a statement as to the [68] *restuls* of the investigations made by the trustee concerning reasonable grounds of opposition to the discharge and as to requests from creditors from whom he held powers of attorney, announced and declared in favor of authorizing the trustee to oppose the discharge. That at said meeting, certain other creditors in person or by attorney likewise announced and declared themselves in favor of authorizing the trustee to oppose such discharge. That thereupon the referee asked if there was any creditor present who objected to such authority to the trustee and no objection being made and all creditors assenting thereto, the referee thereupon made an order expressly authorizing the trustee to oppose said discharge.

That affiant was present before the referee on the

3d day of November, 1915, the day set for the first hearing before the referee of the application for a discharge. That affiant heard the objections made by counsel for the bankrupt to witnesses being called for the hearing on discharge and that at said time after counsel for the bankrupt had completed his objections, affiant's associate made a statement in reply in which he stated to counsel for bankrupt that as a matter of fact the creditors had authorized the trustee to oppose the discharge, which statement the referee confirmed.

That at no other meeting at which affiant was present was the point raised by counsel for the bankrupt that there had not been an authorization of the trustee if the meeting itself was in fact legally noticed and called. That according to affiant's best knowledge, information and belief, the position taken by counsel for the bankrupt went to the objection that the notice was insufficient and, therefore, no matter whether all the creditors were present or not and no matter whether [69] all the creditors present voted unanimously in favor of the objection to a discharge, that nevertheless on account of the meeting not being called by a notice sufficient in form the creditors had not, in fact, authorized the trustee to oppose the discharge.

WINFIELD DORN.

(Duly verified.)

[Endorsed]: Filed Feb. 3, 1917, at 10 o'clock A. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [70]

(Title of Court and Cause.)

Trustee's Petition for a Rehearing on Opposition to a Discharge.

STATEMENT.

In this case, if the bankrupt had raised the question as to whether the trustee had been duly authorized to oppose the discharge and as to whether the specifications were sufficient before this Court referred the matter to the referee for the taking of testimony, a great deal of time and trouble would have been saved and the matter would be properly before this Court now for determination on the merits. Instead of so doing, however, as will appear from the affidavit hereto attached, counsel for the bankrupt waited until the day set for hearing before the referee when the trustee had his witnesses present and then made certain objections which are attached to the referee's certificate. These objections did not question that actual authority was given by the creditors to oppose the discharge except that whatever actual authority was given by the creditors was a nullity because the meeting had not been duly called. The matter was argued before [71] the referee. Counsel for the bankrupt was advised that actual authority had been given by the creditors to the trustee. Counsel for the trustee presented their side to the referee and stated that if in the referee's opinion there was any question as to the authority of the trustee to oppose the discharge or as to the sufficiency of the specifications that they desired that the case be certified back to the court so that they

might ask leave to correct the same. Authorities were presented; the matter was taken under advisement, and the case continued. Thereafter, the referee at the next hearing ruled that the notice and specifications were sufficient and directed counsel to proceed with the hearing. As no issues were raised by the pleadings covering these objections which have been overruled, and as the actual authority from the creditors was not questioned, but from the attitude of counsel, conceded, no evidence was offered on this point, the theory of the trustee being that under the objections raised by the bankrupt which did not dispute actual authority, no evidence was necessary to establish the same, and, therefore, no finding by the referee was made as to the authority of the trustee, except as to the sufficiency of the notice. The referee did, in his certificate, state that "at the time set for the hearing, no creditor appeared in opposition to make the order authorizing the trustee to oppose the discharge," but from an examination of the certificate it will appear that this was inserted as an explanation for the ruling by the referee of his view of the law that the bankrupt [72] was not a party who could be heard at a meeting of creditors where the question as to whether the trustee should be authorized to oppose an application for a discharge is to be considered.

Therefore, the referee's certificate before this Court is insufficient to show the actual facts relating to the authority given to the trustee by the creditors to oppose the discharge, and we must earnestly urge that under the law, a rehearing should be granted

and the matter rereferred to the referee so that the trustee may be permitted to offer proof of the actual authority givn by the creditors to the trustee and then to amend the specifications to conform to the proof, if, in the opinion of the Court, the same are insufficient.

LAW.

I.

This Court has authority to set aside its order and permit a rehearing.

> "For the exercise of this jurisdiction they are (bankruptcy courts) considered as always open and as having no separate terms, and a case in bankruptcy is one continuous proceeding from its inception to the closing of the estate and discharge of the trustee. Therefore, any order, decision, or decree made in the progress of such a cause remains subject to the control of the Court until the final close of the case, and, saving only vested rights which may have accrued under it, may be corrected if found to be erroneous, modified to suit the facts or vacated and set aside, without regard to the fact that one or more of the periods appointed for the stated terms of the court may have elapsed."
>
> Section 25, Black on Bankruptcy, citing a large number of cases, notably Sandusky vs. Bank, 23 Wall. 289; 23 Lawyers Ed. 155.
>
> "And an application for the re-examination of an order or decree in bankruptcy may be made by motion or petition, according to the circumstances of the case."

Section 25, Black on Bankruptcy. [73]

"The discharge decree may be vacated on other grounds also . . . , but such vacating, merely puts the discharge petition back for a rehearing and is different from the revocation of the discharge."

Remington, Section 2818, page 1649, Vol. 2.

II.

The policy of the law in reference to a discharge in bankruptcy is to have the same determined upon the merits.

"It is admitted by counsel that the specifications are not in proper form and leave is asked to amend them. Objection is made that there is nothing by which to amend, the specifications being so entirely defective. There was an old doctrine that amendments could be made only where a good cause of action was defectively stated, but in modern practice, and especially under our liberal federal statutes of amendments, an entirely new cause of action may be stated in a pleading by way of amendment and there are some very radical and startling rules to that effect. Some decisions are against this, particularly where the bar of the statute of limitations is involved or some like effect is the result of allowing the substitution of the new ground of action. Still the modern rule is that of great liberality in quite all cases and it seems to me that if a bankrupt has been guilty of any of the offenses for which his discharge may be opposed the most liberal rule of

amendment of specifications should prevail and that he should not be allowed to escape by the failure of the creditors to properly plead the grounds of opposition. The ordinary discretion of the Court will protect the bankrupt against any injustice in the application of this liberality of amendment; his privilege of discharge from his debts is purely a matter of statutory grace and not of any common right at all and he should expect always to be denied discharge unless he complies strictly with the conditions entitling him to that indulgence by refraining from any wrongdoing denounced by the statute as a bar to his discharge. Here the specifications indicate that if the facts be properly pleaded there may be a bar, not certainly so, and it may in the end turn out to be only a fraud upon creditors not made a ground for opposing the discharge, but it may be otherwise, and the averments are not so entirely destitute of all merit as to invoke even the old rule of amendment relied on by the bankrupt's counsel." [74]

The Court then cites a large number of cases and says:

"The practice as to amendments under the existing bankruptcy statute of 1898 is just as liberal as under the former act and in other courts. . . . The bankruptcy statute being very liberal to the debtor in the matter of his discharge, confining the grounds of opposition to conduct on his part of a criminal nature of

quasi-criminal carelessness and negligence, he should not be allowed to receive the acquittance of the statute because of any embarrassment or obstruction encountered by his creditors in presenting their opposition to his application for it. Only negligence of a culpable character on their part should debar them from the benefit of Revised Statutes, Section 954, as to the amendment of their specifications, and these, it seems to me, are the considerations which should control the Court in the exercise of its discretion in the premises."

In re Glass, 119 Fed. 509.

Therefore, the trustee having been actually authorized by the creditors in accordance with the law to oppose the discharge herein, and the referee having decided as a matter of fact, after hearing and carefully considering the testimony offered in this matter, that the objections made by the trustee should be sustained, it is the policy of the law, as laid down by the above case (which is a leading case, cited in a great many other cases) that a rehearing should be granted in this matter so that any technical defects of the record before this Court may be corrected in order that this Court may determine the matter upon the merits.

III.

There is an exception to the general rule that ignorance of the materiality of a fact not offered as proof is not ground for a rehearing or new trial.

While the general rule of law is that ignorance of the materiality of a fact not offered as proof is

not a ground for a rehearing or new trial, yet there is an exception where counsel are reasonably led by opposing [75] counsel to try their case upon a theory which would dispense with the necessity of proving certain facts when, if they had not been so led, they would have offered evidence to establish the same. In other words, when counsel for the bankrupt in their pleadings and at the commencement of the hearing before the referee, made objections to the matter proceeding, copy of which is attached to the certificate of the referee, and throughout the trial made no contention that the actual authority of the trustee was questioned, leading the court and counsel for the trustee to believe that this fact was conceded, then the trustee should be permitted under the law to have a rehearing in order to offer this evidence of actual authority which is considered under the authorities as newly discovered evidence, even though the materiality alone can be truly said to be newly discovered.

In reference to newly discovered evidence for our motion for new trial:

> "It is noted that there is in the language of the opinion first above reciting a reference to exception in the case of surprise. This exception is founded on the doctrine that where the cause is tried upon the theory that could not have been reasonably anticipated, it is surprise authorizing a new trial; and, if the moving party is thereby placed in such a situation that he cannot fully avail himself of evidence that would otherwise have been at his command he

would be entitled to a new trial upon the additional ground of newly discovered evidence, even though the materiality alone can be truly said to be newly discovered. To this extent, there is an exception to the rule that a party is bound or presumed to know the materiality of the evidence in support of his case."

Section 89, Hayne's New Trial and Appeal, Revised Edition, Vol. 1, page 414. [76]

IV.

The referee is an arm of this court, sitting in its aid as a master.

"The opinion and order granting a discharge was entered herein on June 12, 1902. Motion for rehearing was made on June 18, 1902. The ground of it is that the referee exceeded his jurisdiction in reporting to the court that the objections of the creditors to the discharge are not sustained by the evidence taken by him. The order of reference directs him to report the facts, with the evidence taken, to the court, together with his findings as to the same.

"The application for discharge must, by section 14 of the Bankrupt Law, and General Order in Bankruptcy No. 12, Section 3, be heard and decided by the judge of the court. The referee has no jurisdiction to determine the question, but the court may refer the case to him generally for a report. He aids the court like a master in chancery. He cannot finally determine the question of discharge or nondischarge, but he may be ordered to report the facts and his recommenda-

tion or conclusion as to the matter. This is merely to aid the judge, and the court then determines the matter. The practice in bankruptcy is much like that in equity, and it is hardly supposable that the law-making power intended that a court, if it saw proper, should not avail itself of such aid. (In re Kaiser, 2 Am. B. R., 767, 99 Fed. 689."

In re Rauchenplat, Vol. 9, A. B. R., 763.

If this whole matter had been heard before the above court, the question as to the authority of the trustee and the sufficiency of the pleading would have been passed upon and defects, if any, as to the record, would have been corrected, and then the case would have proceeded to final determination upon the merits. Therefore, the referee, sitting as a master of the court, if it shall appear to this court that the referee has made any erroneous ruling as to the law, or has omitted to find, through inadvertence, as to any material facts which were conceded as true upon the hearing, this court should attempt to correct the same so that the matter may be determined as if the whole case had been heard before it. In other words, in this case, through the actions of counsel for the bankrupt, the trustee was led to believe that the fact that the trustee had been actually authorized to oppose the discharge was conceded. [77]

Furthermore, by such action upon the part of counsel for the bankrupt, the referee, assuming that the actual authority was conceded, but believing that the same was not material upon the hearing before him on account of the fact that the bankrupt had, in

his answer, made no point of the lack of authority, overruled the objections made by counsel for the bankrupt and ordered counsel for trustee to proceed.

Therefore, according to the authorities hereinbefore referred to, counsel for the trustee again must earnestly urge that a rehearing should be granted and the matter re-referred to the referee so that the trustee may be permitted to offer proof of the actual authority granted by the creditors to the trustee and then to amend the specifications to conform to the proof if, in the opinion of the Court, same are insufficient.

Respectfully submitted,
CLARENCE A. SHUEY,
WINFIELD DORN,
Attorneys for Trustee. [78]

(Title of Court and Cause.)

(Affidavit of Clarence A. Shuey in Support of Petition for Rehearing.)

United States of America,
Northern District of California,—ss.

Clarence A. Shuey, being first duly sworn, deposes and says: That he and Winfield Dorn, his associate, have been at all times herein, and now are, the attorneys of record for the trustee in this matter.

That pursuant to the instructions of the creditors, the affairs of the bankrupt were thoroughly investigated by the trustee and by affiant and his associate as attorneys for the trustee. That after such investigations, creditors holding a majority in amount of

all claims in this estate expressed the desire to have the trustee take such steps on behalf of all the creditors as might be necessary to oppose any application made for a discharge by the bankrupt.

That owing to the large number of requests which the trustee and his attorneys received from creditors, the said trustee duly petitioned this Court for authorization to make opposition to the application for discharge filed by the bankrupt.

That thereafter, as appears from the records of this court, and the certificate of the referee on file [79] herein, notice was sent by the referee to all creditors of the estate entitled to notice that the trustee had filed said petition and that the same would be heard at the office of the referee, Room 202, U. S. Courthouse and Postoffice Building, San Francisco, California, on May 7, 1915, at ten A. M. That at said meeting, at said time and place, a large number of creditors were present in person or by their representative attorneys in fact, to wit, creditors representing a majority in amount of all allowed claims, and affiant verily believes, a majority in number of all allowed claims. That at said meeting the matter of the trustee's application for authorization to oppose said discharge was heard and considered by the creditors and all creditors present or represented at said meeting announced and declared themselves to be in favor of authorizing the trustee to oppose the said discharge. That thereupon the referee asked if there was any creditor present who objected to such authorization of the trustee, and no objection being made, and all creditors assenting thereto, the

referee thereupon made an order expressly authorizing the trustee to oppose the said discharge.

Affiant further deposes that at the hearing before the referee of the opposition to the said discharge, when the trustee had his witnesses present, ready to proceed, and at the time that counsel for the bankrupt objected to the taking of testimony and the proceeding with the said hearing on the ground that the trustee was not legally authorized to oppose the said discharge, affiant stated that the trustee had been authorized at a meeting of the creditors as above set forth, which statement was confirmed by the referee. [80]

That counsel for the bankrupt accepted said statement so made and confirmed without question, and, as affiant understood and believes, as proof of the fact, and the proceeding continued without an attack being made upon said statement or proof.

That as will appear from the records in this case, no issue was raised by the answer to the specifications of opposition on the ground that the trustee was not legally authorized.

That affiant further deposes that he verily believes that the authorization to the trustee to oppose the discharge was given and conferred in the manner provided by law and established by the practice in bankruptcy.

CLARENCE A. SHUEY.

(Duly verified.)

[Endorsed]: Filed Feb. 2, 1917, at 9 o'clock and 20 min. A. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [81]

(Title of Court and Cause.)

(Affidavit of Wilder Wight in Opposition to Trustee's Motion to Vacate.)

Comes now the above-named bankrupt, and without admitting the right of the above-named trustee in bankruptcy to make a motion to vacate the judgment of discharge herein, and without waiver of any kind, files this affidavit.

WILDER WIGHT,
Attorney for Bankrupt. [82]

State of California,
Northern District of California,—ss.

Wilder Wight, being first duly sworn, deposes and says: That affiant is an attorney at law and attorney for H. S. White, the above-named bankrupt, and since the 3d day of November, 1915, has represented said bankrupt in all matters pertaining to the opposition of his discharge, and has attended all hearings before the Special Master and Court in connection therewith.

That said matter was first set for hearing before the Honorable Armand B. Kreft as Special Master on the 3d day of November, 1915. That on said day affiant made objection to witnesses being called, testimony being taken, or to any hearing of said matter, on the ground, among others, that the specifications of objection did not state that the trustee of said bankrupt was authorized to oppose the discharge of said bankrupt by the creditors of said bankrupt in a meeting duly convened, and affiant argued this ob-

jection at length before said Special Master, most of said argument being devoted to the point that not only were the specifications of objection fatally defective for the reason that they contained no allegation that the trustee was authorized to oppose the bankrupt's discharge by a meeting of the creditors called for that purpose, but also that the records in this case showed no such authority, and further that no such authority existed in fact. The Special Master did not pass upon said objection at that time, but continued the matter to November 11th, 1915. Shortly thereafter, but before the next hearing, your affiant submitted to said Special Master and served upon counsel for the trustee a brief in support of his objection, eighteen pages of which were devoted to the point that not only was it not so alleged in the specifications of objection, but also that the records in this case did not show that the trustee herein had been authorized to oppose the bankrupt's discharge by the creditors of the bankrupt in [83] or at any meeting, and that such authority did not in fact exist. So that counsel for the trustee were fully apprised of the nature of the objection made, and as there were thereafter extended hearings before the Special Master at which evidence was received, counsel had ample opportunity to meet this objection and to prove that the trustee was authorized by the creditors to oppose the discharge herein if such authority in fact existed.

That on the 11th day of November, 1915, the Special Master made decision overruling said objection, and the matter was continued to the 24th day

of November, 1915, for the purpose of taking testimony. That on said 11th day of November, 1915, and after said objection had been overruled, the order of continuance made and the hearing concluded, affiant discussed with the said Special Master, informally, his decision. It was at the end of this informal discussion that the Special Master remarked to your affiant that, "Mr. Shuey and Mr. Dorn represent certain creditors." Neither Mr. Clarence A. Shuey nor Mr. Winfield Dorn said anything in this behalf to your affiant, and your affiant said nothing in this behalf to either Mr. Shuey or Mr. Dorn, and furthermore, your affiant made no reply to the Special Master.

That neither of the counsel for the trustee in bankruptcy herein stated or claimed, then, or at any other time, to your affiant, either at any of the subsequent hearings of said matter, or in any conversations, or in any of their briefs, four of which they filed, that the matter of the trustee's application for authorization to oppose said discharge was heard and considered by the creditors and all creditors present or represented at the claimed meeting of creditors on May 7th, 1915, announced or declared themselves to be in favor of authorizing the trustee to oppose the said discharge, nor has either counsel made any statement or claim to your affiant indicating in any way that there was any action taken by the creditors at any meeting authorizing the trustee to oppose this discharge, [84] nor has either counsel for the trustee ever asked affiant to accept any such statement as proof of any such fact, nor has your affiant

either by word or act ever given to either of counsel for the trustee herein any reason whatsoever to believe that your affiant considered any authorization of the trustee herein by the creditors to oppose the discharge of the bankrupt as proved or that such authority exicted in fact, and your affiant has always claimed that such authority of the trustee by the creditors did not exist in fact; and your affiant verily believes that the trustee herein was not authorized by the creditors at a meeting called for that purpose, to oppose the discharge of this bankrupt, for the reason that the records in this case contain no record or statement of any kind as to any meeting of the creditors of this bankrupt on the 7th day of May, 1915, nor of any vote or authorization of the trustee by the creditors thereat; and affiant verily believes that if there had been a meeting of creditors or any action taken at such meeting that there would have been a record of the same, for the reason that whenever there has been a meeting of the creditors in this case, the records so state, and there is also a record of the proceedings had and of the vote taken, and the records in other cases indicate that it is the invariable practice that when there is a meeting of the creditors, to so state, and if there is a vote, a record of the vote; that throughout this whole proceeding whenever counsel for the trustee have asked affiant to admit a fact, they have required of him a written stipulation, unless in open court with the court reporter present.

That sometime during the month of December, 1915, when affiant had occasion to visit Mr. Shuey to examine his copy of the testimony of the bankrupt

taken on his general examination, Mr. Shuey remarked to affiant, in discussing this case, that he was satisfied that the [85] authorization to the trustee by the referee in this case was legally sufficient and proper, because he had examined a number of the records in the office of the referee in bankruptcy, and that it had always been done that way. That on December 30th, 1916, when affiant had occasion to be present in Court for the purpose of having continued the hearing of the report of the Special Master in this case, affiant asked Mr. Shuey if he had any objection to affiant's filing a brief in this matter, to which Mr. Shuey consented, and he then said to affiant, "You know that you are foreclosed as to all matters of fact; on those the report of the referee is final, and I am not afraid of the law."

That the most that counsel for the trustee herein has ever claimed is that there was authority conferred upon the trustee by the referee at a creditor's meeting, and affiant does not recall that even this claim was made until counsel filed his brief in reply to affiant's after the Special Master had rendered his report, the claim of counsel theretofore always having been that an authority conferred upon the trustee by the referee was sufficient, and until he filed his affidavit in support of this motion to vacate the judgment of discharge herein, counsel has never claimed nor intimated in any way at any of the hearings before the Special Master, nor in any conversations with your affiant, nor in any of his briefs, of which he filed four, that there was any authority conferred upon the trustee in bankruptcy by the creditors of the

bankrupt to oppose the discharge of the above named bankrupt.

And further your affiant saith not.

WILDER WIGHT.

(Duly verified.)

[Endorsed]: Filed Feb. 2, 1917, at 9 o'clock and 30 min. A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [86]

(Title of Court and Cause.)

Opinion and Order Denying Petition for Rehearing and Motion to Set Aside the Discharge.

WILDER WIGHT, Esq., Attorney for Bankrupt.

CLARENCE A. SHUEY, Esq. *Esq.,* and W. DORN, Esq., Attorneys for Trustee.

On an application made to the Court by the bankrupt for a discharge, the trustee appeared and filed specifications in opposition thereto, and the matter was referred for hearing to the referee. The referee reported, and recommended that a discharge be denied. A hearing was thereafter had before the Court upon this report, and the Court ordered the discharge of the bankrupt notwithstanding the adverse report of the referee for the reason that it nowhere appeared that the trustee was authorized to interpose objections at a meeting of creditors called for that purpose as required by Section 14 of the Bankruptcy Act. The trustee now moves that the discharge be set aside and the matter referred again to the referee, and bases the motion upon the ground that the

trustee was in fact authorized by the creditors to oppose the discharge, although the record as brought here shows that whatever authorization the trustee had was by order of the referee. The motion to set aside the discharge is opposed by the bankrupt, who contends that every opportunity was afforded the trustee to make proof of the fact that he was authorized by the creditors to oppose [87] the discharge, if such were the fact, and insists, as he has at all times insisted that the specifications do not show any authorization at all, while the notice of appearance filed by the trustee contains the recital "the trustee having been first duly authorized by the above Court to interpose objections to the bankrupt's discharge."

A re-examination of the lengthy record and of the voluminous briefs fails to disclose a single suggestion prior to the present motion, that the trustee was authorized to make opposition by any one except "by order of the Court" or by "order of the referee" which I take to mean the same thing. The trustee was not taken by surprise, for the bankrupt urged from the beginning the insufficiency of the specifications, and the lack of authorization, and I see no reason, in view of the conflicting affidavits now represented, for disturbing the conclusions heretofore reached.

The petition for a rehearing, and the motion to set aside the discharge are denied.

February 8, 1917.

M. T. DOOLING,
Judge.

[Endorsed]: Filed Feb. 8, 1917, at 5 o'clock and 15 Min. P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [88]

(Title of Court and Cause.)

Petition for Appeal by Trustee in Bankruptcy and Order Allowing Appeal.

Now comes Wliliam R. Pentz, the trustee of *of* the above estate, considering himself aggrieved by the judgment of the above Court made herein granting to said bankrupt a discharge, and, within the time required by law, does hereby appeal from the said judgment to the United States Circuit of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings and papers upon which said judgment was made, duly authenticated, may be sent to the said United States Circuit Court of Appeals for the Ninth Circuit.

Dated February 16, 1917.

CLARENCE A. SHUEY,
WINFIELD DORN,

Attorneys for William R. Pentz, Trustee in Bankruptcy of H. S. White, Doing Business Under the Name of H. S. White Machinery Company.

The foregoing appeal is allowed.

Dated February 16, 1917.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed Feb. 16, 1917, at 11 o'clock A. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [89]

(Title of Court and Cause.)

Assignment of Errors.

And now on this 16th day of February, 1917, comes William R. Pentz, the trustee in bankruptcy of the estate of H. S. White, doing business under the name of H. S. White Machinery Company, through his attorneys, Winfield Dorn, Esquire, and Clarence A. Shuey, Esquire, and says:

That the judgment of the above-entitled court made and entered herein disregarding the recommendations of A. B. Kreft, Esquire, referee in bankruptcy of said court, and reversing certain rulings of said referee and granting to the bankrupt a discharge, is erroneous and against the just rights of the said trustee in bankruptcy for the following reasons:

1. That the Court erred in disregarding the recommendations of the referee that a discharge be denied to the bankrupt herein.

2. That the Court erred in holding that a discharge be granted herein. [90]

3. That the Court erred in holding that the trustee was not authorized by the creditors to oppose the discharge.

4. That the Court erred in not affirming certain rulings made by the referee holding that the trustee was duly authorized by the creditors to oppose the discharge.

5. That the Court erred in holding that it was necessary for the trustee to prove in these proceed-

ings that he had been authorized to oppose the discharge.

6. That the Court erred in holding that the order of the referee made on the 7th day of May, 1915, authorizing the trustee to oppose the discharge herein was not conclusive evidence of sufficient authority.

7. That the Court erred in holding that the order of the referee made on the 7th day of May, 1915, authorizing the trustee to oppose the discharge herein was not *prima facie* evidence of sufficient authority.

8. That the Court erred in holding that a trustee in bankruptcy is not a party in interest in opposing the application for a discharge by the bankrupt.

9. That the Court erred in holding that Section 14b (6) of the Bankruptcy Act of 1898 as amended is not a provision solely intended for the protection of creditors.

10. That the Court erred in reversing the ruling of the referee holding that Section 14b (6) of the Bankruptcy Act of 1898, as amended, is a provision solely intended for the protection of creditors.

11. That the Court erred in holding that a bankrupt can question the authority of a trustee to oppose the bankrupt's application for a discharge. **[91]**

12. That the Court erred in holding that the bankrupt can question the authority of the trustee to oppose the discharge after he has been so authorized by an order of Court duly made at a meeting of creditors called for that purpose.

13. That the Court erred in holding that it was unnecessary for the bankrupt to establish affirma-

tively that the trustee had not been duly authorized to oppose the discharge.

14. That the Court erred in holding that the bankrupt did not waive all objections to the authority of the trustee to oppose the discharge herein.

15. That the Court erred in holding that the issue of authority to the trustee was not waived by the pleadings and proceedings herein.

16. That the Court erred in holding that the trustee was obliged to offer proof and the referee to find upon an issue not raised by the pleadings.

17. That the Court erred in denying the motion of the trustee for an order vacating the order granting a discharge and for a further order re-referring the matter to the referee for the purpose of certifying and finding as to the facts constituting the authority of the trustee to oppose the discharge.

18. That the Court erred in denying the trustee's petition for a rehearing in order to permit him to establish affirmatively by proof that the trustee had, in fact, been duly authorized by the creditors at a meeting called for that purpose to oppose the discharge.

19. That the Court erred in denying the trustee the right to amend the specifications to conform to the actual [92] facts with reference to the authorization of the trustee by the creditors to oppose the discharge.

20. That the Court erred in denying the trustee's petition for a rehearing and re-reference to the referee so that the trustee might be permitted to offer proof of the actual authority granted by the credi-

tors to the trustee and then to amend the specifications to conform to the said proof.

21. That said judgment was contrary to the law and the facts herein.

WHEREFORE, the said William R. Pentz, as such trustee, prays that said judgment of the District Court may be reversed.

CLARENCE A. SHUEY,
WINFIELD DORN,
Attorneys for William R. Pentz, Trustee in Bankruptcy of H. S. White, Doing Business Under the Name of H. S. White Machinery Company.

[Endorsed]: Filed Feb. 16, 1917, at 11 o'clock A. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [93]

(Title of Court and Cause.)

Citation on Appeal (Copy).

United States of America,
Ninth Circuit,—ss.

To H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city and County of San Francisco in said District on the 17th day of March, 1917, next, pursuant to a petition for appeal and assignment of errors filed in the clerk's office of the District Court of the United States for the Northern District of California, First Division, in the above-entitled

matter, to show cause, of any there be, why the judgment of the said District Court rendered in said matter and made and entered herein granting to said bankrupt a discharge, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable M. T. DOOLING, Judge of the [94] said District Court this 16th day of February, in the year of our Lord one thousand nine hundred and seventeen and in the independence of the United States of America one hundred and forty-first.

M. T. DOOLING,
United States District Judge.

Return on Service of Writ.

United States of America,
Northern District of California,—ss. 8700.

I HEREBY CERTIFY AND RETURN that I served the within CITATION ON APPEAL, on the herein named H. S. WHITE, doing business under the name of H. S. WHITE MACHINERY COMPANY, Bankrupt; and also on WILDER WIGHT, his attorney, each, by handing to and leaving a true and correct copy thereof with, H. S. WHITE, doing business under the name of H. S. WHITE MACHINERY COMPANY, and WILDER WIGHT, his Attorney, each personally, Oakland, Alameda County, California, in said District on the 19th day of February, A. D. 1917.

J. B. HOLOHAN,
United States Marshal,
By I. W. Grover,
Office Deputy.

[Endorsed]: Filed, Feb. 20, 1917, at 10 o'clock and 15 min. A. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk [95]

(Title of Court and Cause.)

(Admission of Service of Petition for Appeal, Assignment of Errors, and Order Allowing Appeal.)

Receipt of a copy of petition for appeal by trustee in bankruptcy and order allowing appeal and receipt of a copy of assignment of errors in the above-entitled matter this day admitted by attorney for H. S. White, without any other admission or waiver whatsoever.

Dated Feb. 16, 1917.

WILDER WIGHT,
Attorney for H. S. White.

[Endorsed]: Filed Feb. 26, 1917, at 2 o'clock and 45 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [96]

(Title of Court and Cause.)

Statement of Evidence to be Used on Appeal.

The report and certificate of the referee in bankruptcy containing a summary of the evidence adduced at the hearing of the above-entitled matter, the following portions of said report and certificate are hereby referred to and herein incorporated to be used as a statement of the evidence on the appeal herein.

1. Page 1, commencing with paragraph 2, the first words of which are "That upon."

2. Page 2, adding after the words "which were overruled" said objections were as follows:

Mr. WIGHT.—The bankrupt objects to the introduction of any evidence by the trustee at this hearing; to the calling of any witnesses by the trustee; to any participation in this hearing or in any proceedings in opposition to his application for discharge by the trustee, or to the hearing or determination of the trustee's objections to his discharge, and moves that the opposition of the trustee and his specifications of objection be dismissed, stricken out and disregarded and moves that the Master report to the Court that nothing has been filed with him or with the Court that requires him to take testimony, on the grounds that the specifications of objection are fatally defective and insufficient in law and unauthorized by law; that they state no lawful or valid ground of opposition to the bankrupt's application for discharge according to the Bankruptcy Act as now in force; that they present no issue that should be considered or determined; for the reasons:

Firstly. The specifications of objections do not show the capacity of the objecting party and contain no allegation showing that the trustee was authorized by the creditors at a meeting called for that purpose to oppose the application for discharge herein.

Secondly. That the records and files in this

matter affirmatively show that the trustee was not so authorized.

Thirdly. All the allegations in the specification of objection are upon information and belief. [97]

Fourthly. The specifications of objection are not verified as required by law.

Fifthly. The specifications of objections wherein they seek to allege the destruction, concealment, or failure to keep books of account merely aver the words of the statute, and are uncertain, argumentative, and general.

Sixthly. The specifications of objections wherein they seek to allege the falsity of the statement averred to have been given to the Bank of California do not state, first, that said statement was "materially" false, or, second; wherein or how or in what manner or particulars said statement was false, and are uncertain and general.

Seventhly. That the allegations commencing with line 29, page 2 of the specifications of objection to and including line 22 of page 3 of said specifications are inferential and not positive.

Eighthly. That there is not any certain and specific allegation as to what amount of money the bankrupt is claimed to have procured from the Bank of California.

3. Page 3, omitting paragraph 1, the first words of which are "It therefore appears," and all thereafter on that page.

4. Page 4, omitting all to paragraph 2, the first

words of which are "The statement." After the word "item" and before the word "assets" insert: "For the purpose of procuring credit from time to time, with the above bank for our negotiable paper, or otherwise, we furnish the following as being a fair and accurate statement of our financial condition on the 31st day of December, 1912." [98]

5. Pages 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 16a and page 17 to paragraph 2, the first words of which are "It appears," and the second sentence in paragraph 2, omitting the first sentence.

6. Page 18, commencing with the last paragraph, the first words of which are "As to the bills."

7. Pages 19, 20, 21.

8. Page 22 to the last paragraph, the first words of which are "the bankrupt's explanation."

9. Page 23, commencing with paragraph 2, the first words of which are "As to the stock."

10. Pages 24, 25, 26, and page 27 to the last paragraph, pg. 28 commencing with the words "My deduction."

11. Page 29, commencing with the sub-title "Books."

12. Pages 30, 31, 32, and 33.

13. Page 34 to paragraph 1, the first words of which are "The testimony."

14. Insert: "The bankrupt opened his account with the Bank of California on April 19, 1913, by borrowing $10,000, for which he gave his promissory note payable in 90 days. On July 18, 1913, he went to the Bank, executed a new note for $10,000 payable in 90 days, drew his check for $10,000

with which he paid his old note, with interest; and the old note was returned to him marked "Paid." (131.) On July 18, 1913, when his second note became due, he executed a new note for $10,000 payable 90 days after date, drew his check and paid the second note with interest. (132.) When that note became due, which was on October 18, 1913, he executed a third note for $10,000, again for 90 days, drew his check and paid his second note with interest. (132.) When that note became due, which was on January 20, 1914, he went through [99] the same transaction, executing his fourth note for $10,000, payable 90 days after date, (6), paying the old one with interest with his check. (133. Ban. Ex. 4). On April 20, 1914, he repeated the transaction and executed his fifth note to the Bank of California for $10,000 payable one day after date (Tr. Ex. B.), paying the old one with interest with his check.

Testimony of Mr. MOULTON.

Mr. WIGHT.—Now, in making that renewal note, Mr. Moulton, which is the note we have in evidence, do you remember whether or not you referred to this statement?

A. I don't remember. You are speaking now of the renewal note?

Q. The renewal note, yes.

A. I don't remember.

Q. But you won't say positively that you did do it?

A. No, I won't say positively that I did or did not. (14, 15.)

Mr. White never saw Mr. Anderson after his one conversation with him on April 19, 1913. (162.)

Testimony of Mr. ANDERSON.

A. I remember discussing with this gentleman the risky nature of the business he was conducting. (160.) I actually remember it, sir, because the thing impressed itself on my mind. It was the first experience that I ever had outside, with the other institution. It shocked me; on account of the fact, secondly, that he was engaged in a business that was hazardous, and that everybody knew was hazardous. (162.)

Mr. SHUEY.—Q. Was that the document that you saw at the time that you said that you had this conversation?

A. Those are the figures, Mr. Shuey. I cannot from memory say that that is the actual document.

Q. Was the document that was presented to you at that time substantially the same as that, so far as you can recollect?

A. Just the same. The statement was a statement of his standing at the close of business of the year 1912.

Q. That statement was furnished you by Mr. White, was it?

A. It was represented by Mr. White. (159.)

Mr. Wight, on cross-examination.

Q. You don't know whether that is the statement or not?

A. I don't know that that is the statement. It was a statement of December 31st, 1912. (159.)

Testimony of Mr. MOULTON.

Mr. Wight, on cross-examination. Q. Do you remember, Mr. Moulton, exactly when this statement was received by you in relation now to the time when the loan was made?

A. No. It was received before the loan was granted.

Q. Now do you say that, Mr. Moulton, because of an independent recollection of the matter, or because of your ordinary course of business? [100]

A. The ordinary course of business.

Q. You have no independent recollection of it?

A. No.

Q. Then you can't say positively, now, referring now to your independent recollection, whether that statement was received or—

A. No, we either had the figures in some way, or that statement before the loan was granted. (11.)

The claim of the Bank of California contains the following items, April 20, 1914, loan of $10,000; March 24, 1914, loan of $1,200; March 25th, 1914, a loan of $1,225; and February 22d, 1914, a discount of $390; in the aggregate, without interest, the sum of $13,198.

Mr. Moulton testified that in making the loan of $1,200 on March 24th, 1914, that he did not remember whether he referred to Mr. White's statement or not, and that he would not say positively whether he did or did not. Likewise with the loan of $1,225 on March 25, 1914, and the discount on March 29th of 383.30. The original $10,000 loan was made by vir-

tue of Mr. Anderson's authority, and not Mr. Moulton's. (16, 9, 159.)

Mr. White testified that he always had some money in the safe, and that his statement was an honest one and not intentionally falsified. (144, 122.) That the item of $122,654.74 in his statement represented all that he had in the way of assets, stock in San Francisco and other places. (G. T. 175, 176.) That John Jardine never was in his place of business at all after 1908.

John Jardine testified that he did not go over the whole of Mr. White's stock, and that it would be necessary so to do in order to determine its value. (54.) That his testimony concerned the value of the stock at 620 Brannan Street, San Francisco, and no other place.

Mr. White testified that he stored stock in several places on December 31st, 1912; that there were five separate places where stock was stored in the City and County of San Francisco on that [101] date, and besides he had a lot of machinery in Oakland and some in Placer County.

Mr. Ernsberger did not qualify as an expert. He testified that Mr. White had much stock that he was not familiar with, and based his estimate of value upon what a building the size of Mr. White's might contain. (89,90, 91.)

The following are excerpts from Dunn's report, which Mr. Moulton testified was in the possession of the Bank of California at the time the loan was made, was read by him, and that its contents were in his mind. (44, 47.)

Sept. 16, 1912.

"H. S. White, when interviewed at this time, stated that he had no inventory or balance sheet to submit, but could give the *1* following rough estimate of his present financial condition; present stock on hand must be worth at least $140,000 and in addition he had between $10,000 and 12,000 in good accounts receivable, and a small cash balance in bank, and current indebtedness is about $20,000. His figures as to merchandise on *had* are regarded as quite full and more conservative estimates of outsiders place the value of his machinery and metal on hand at somewhere from $65,000 to $90,000.

It is thought that he is somewhat too widespread, and that he is of a somewhat speculative disposition and has accumulated rather too much stock on hand for his capital, and as a result is said to find himself hard up financially at times.

Altogether White is regarded as worth probably from $50,000 to $75,000 in clear available resources over and above his liabilities.

Oct. 3, 1912.

It is felt that he can be safely rated not to exceed $75,000 in tangible net resources. (44, 45, 46.)"

Mr. White scheduled his stock in trade at the time of his bankruptcy at a value of $90,000.

Mr. Moulton testified that if Mr. White's statement had shown $10,000 more or less in the liabilities or assets that he would have been granted the loan just the same, and also that he would have loaned

Mr. White $20,000 if he had asked for it. Mr. Anderson testified that if Mr. White's statement had shown a net worth of $100,000 instead of $130,000 that he still would have [102] granted him the loan. Mr. Moulton regarded the date of the inventory in the statement as immaterial.

On April 22, 1914, the Seaboard Bank attached Mr. White's stock in trade, and put a keeper in charge, who was there two months before Mr. Pentz took charge, and Mr. White testified that there was a lot of stuff missing since the attachment. (G. T. 4.)

The books of account which were in court and to which Mr. Herrick testified were not shown to be all of the books of account of the bankrupt, and objection to his testimony was sustained on that ground. The system of bookkeeping employed by Mr. White at the time of his bankruptcy was the same that he had pursued since the year 1900.

Q. Mr. White testified (G. T. 175–176):

Q. Now, you have also an item of $122,654.25 merchandise in stock. What property did that consist of?

A. Everything that I had in the way of assets.

Q. Where?

A. Stock, San Francisco, and other places.

Q. What other places?

A. That I have already mentioned to you yesterday, part that I had already disposed of between that time and bankruptcy.

Q. Did it include the general stock in trade?

A. The general stock in trade wherever it may

have been located between that time and the time before, the time that I took stock, the time that the trouble occurred—I had no other stock.

Q. That was the stock that was over there at your place of business at that time? Is that correct?

A. And other places.

Q. What other places?

A. Wherever I may have had it at that time.

Q. What other places do you remember?

A. I had a number of going places at the time that I was a bankrupt.

Q. How much property did you have outside of your shop? [103]

A. I could not tell you at this time.

Q. About how much?

A. I have no possible way to say.

Q. Can you give any idea? A. I cannot.

Q. Would you say it was $500,00?

A. I would not dare to say for the reason that I would buy certain machinery and it would not be in the shape of property. It would not reach the shape of property until it was ready to be disposed of right on the ground where I had it.

I hereby approve the foregoing as a statement of the evidence to be used on the appeal from judgment granting the bankrupt a discharge herein.

M. T. DOOLING,

Judge of the United States District Court in and for the Northern District of California, First Division.

[Endorsed]: Filed Apr. 20, 1917, at 3 o'clock and 45 min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk [104]

(Title of Court and Cause.)

Stipulation for Diminution of Record.

IT IS HEREBY STIPULATED AND AGREED, that the clerk of this court, in following the amended praecipe on file herein, shall omit the full title of court and cause, except upon the praecipe, and refer to the same as "Title of Court and Cause." Also, omit all verifications, except the one attached to the specifications of objections to the discharge, and refer to the verifications omitted, as "Duly verified."

WINFIELD DORN,
CLARENCE A. SHUEY,
Attorneys for Trustee.
WILDER WIGHT,
Attorney for Bankrupt.

Dated April 16th, 1917.

[Endorsed]: Filed Apr. 16, 1917, at 3 o'clock and —min. P. M. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk. [105]

Certificate of Clerk U. S. District Court to Transcript on Appeal.

I, Walter B. Maling, clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 105

pages, numbered from 1 to 105, inclusive, contain a full, true and correct transcript of certain records and proceedings, in the matter of H. S. White, doing business under the name of H. S. White Machinery Company, Bankrupt, No. 8700, as the same now remain on file and of record in the office of the clerk of said District Court; said transcript having been prepared pursuant to and in accordance with the "amended praecipe for transcript of record for use on appeal" (copy of which is embodied in this transcript), and the instructions of the attorneys for trustee and appellant herein.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of Fifty-four Dollars and Sixty Cents ($54.60), and that the same has been paid to me by the attorneys for appellant herein.

Annexed hereto is the Original Citation on Appeal, issued herein (page 107).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 3 day of May, A. D. 1917.

[Seal] WALTER B. MALING,
Clerk.
By C. W. Calbreath,
Deputy Clerk.

C. M. T. [106]

In the District Court of the United States in and for Northern District of California.

No. 8700.

In the Matter of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY,

Bankrupt.

Citation on Appeal (Original).

United States of America,
Ninth Circuit,—ss.

To H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit to be holden at the city and county of San Francisco in said District on the 17th day of March, 1917, next, pursuant to a petition for appeal and assignment of errors filed in the clerk's office of the District Court of the United States for the Northern District of California, First Division, in the above-entitled matter, to show cause, if any there be, why the judgment of the said District Court rendered in said matter and made and entered herein granting to said bankrupt a discharge, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable M. T. DOOLING, Judge of the [107] said District Court this 16th day of February, in the year of our Lord one thou-

sand nine hundred and seventeen and in the Independence of the United States of America one hundred and forty-first.

M. T. DOOLING,
United States District Judge. [108]

(Return on Service of Writ.)

United States of America,
Northern District of California,—ss. 8700,

I HEREBY CERTIFY AND RETURN that I served the within CITATION ON APPEAL, on the herein named H. S. WHITE, doing business under the name of H. S. WHITE MACHINERY COMPANY, Bankrupt; and also on WILDER WIGHT, his attorney, each, by handing to and leaving a true and correct copy thereof with, H. S. WHITE, doing business under the name of H. S. WHITE MACHINERY COMPANY, and WILDER WIGHT, his attorney, each personally, Oakland, Alameda County, California, in said District on the 19th day of February, A. D. 1917.

J. B. HOLOHAN,
United States Marshal.
By J. W. Grover,
Office Deputy.

[Endorsed]: Original. Marshal's Docket No. 8062. No. 8700. District Court of the United States, for the Northern District of California. In the Matter of H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt. Citation on Appeal. Filed at 10 o'clock and 15 min. A. M., Feb. 20, 1917. W. B. Maling, Clerk. By T. L. Baldwin, Deputy Clerk.

[Endorsed]: No. 2980. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt. William R. Pentz, as Trustee in Bankruptcy of the Estate of H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Appellant, vs. H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the Southern Division of the United States District Court for the Northern District of California, First Division.

Filed May 3, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the District Court of the United States in and for the Northern District of California.

No. 8700.

In the Matter of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY,

Bankrupt.

Order Extending Return Day on Citation on Appeal to April 2, 1917.

The undersigned District Judge having on the 16th day of February, 1917, signed and issued in the

above-entitled matter a citation on appeal to the United States Circuit Court of Appeals for the Ninth Circuit by William R. Pentz, Esquire, as trustee of the estate of the above-named bankrupt from the judgment of the above court made and entered herein granting to said bankrupt a discharge and the return day in said citation on appeal having been set for the 17th day of March, 1917, but it appearing that without default of the said trustee in bankruptcy, the clerk of the above-entitled court has been unable to prepare the record on appeal so that it could be filed and docketed in the said United States Circuit Court of Appeals for the Ninth Circuit within the time fixed for the said citation on appeal, and good cause appearing therefor:

IT IS HEREBY ORDERED that the time for such return be and the same is hereby enlarged and that the said return day be and the same is hereby continued to the 2d day of April, 1917.

Done in open court this 17th day of March, 1917.

WM. W. MORROW,
Judge U. S. *Circuit of* Appeals.

[Endorsed]: No. 8700. District Court of the United States for the Northern District of California. In the Matter of H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt. Order Extending Return Day on Citation for Appeal.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to ——— to File Record Thereof and to Docket Case. Filed March 19, 1917. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 8700.

In the Matter of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY,

Bankrupt.

Order Extending Return Day on Citation on Appeal to April 7, 1917.

The undersigned, District Judge, having on the 16th day of February, 1917, signed and issued in the above-entitled matter a citation on appeal to the United States Circuit Court of Appeals, returnable on the 17th day of March, 1917, and the time for such return having been enlarged, and the said return day having been continued to the 2d day of April, 1917, and it appearing that without fault of the said trustee in bankrupcty, the clerk of the above-entitled court has been unable to prepare the record on appeal so that it can be filed and docketed in the said United States Circuit Court of Appeals for the Ninth Circuit within the time fixed for the return of said citation on appeal; and good cause appearing therefor:

IT IS HEREBY ORDERED that the time for such return day be and the same is hereby further enlarged and that said return day be and the same is hereby continued to the 7th day of April, 1917.

Done in open court this 31st day of March, 1917.

WM. W. MORROW,

United States Circuit Judge, Ninth Judicial Circuit.

[Endorsed]: No. 8700. In the United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt. Order. Filed Mar. 31, 1917. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of H. S. WHITE, Doing Business Under the Name of H. S. WHITE MACHINERY COMPANY,

Bankrupt.

Order Extending Return Day on Citation on Appeal to April 21, 1917.

The undersigned, District Judge, having on the 16th day of February, 1917, signed and issued in the above-entitled matter a citation on appeal to the United States Circuit Court of Appeals, returnable on the 17th day of March, 1917, and the time for such return having been enlarged, and the said return day having been continued to the 7th day of April, 1917, and it appearing that without fault of the said trustee in bankruptcy, the clerk of the above-entitled court has been unable to prepare the record on appeal so that it can be filed and docketed in the said United States Circuit Court of Appeals for the Ninth Circuit within the time fixed for the return of said citation on appeal; and good cause appearing therefor:

IT IS HEREBY ORDERED that the time for such return day be and the same is hereby further enlarged and that said return day be and the same is hereby continued to the 21st day of April, 1917.

Done in open court this 7th day of April, 1917.

M. T. DOOLING,
District Judge.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. S. White, Doing Business Under the Name of H. S. White Machinery Company, Bankrupt. Order Enlarging Time for Return Day. Filed Apr. 7, 1917. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 8700.

In the Matter of H. S. WHITE, Bankrupt.

Order Extending Return Day on Citation on Appeal to April 28, 1917.

The undersigned District Judge having on the 2d day of April, 1917, enlarged the time for the return of the citation on appeal herein to and including the 21st day of April, 1917, and it appearing that without fault of the said trustee in bankruptcy the clerk of the above-entitled court has been unable to prepare the record on appeal so that it can be filed and docketed in the said above-entitled court within the time fixed for the return of said citation on appeal so enlarged, and good cause appearing therefor:

It is hereby ORDERED that the time for such return day be and the same is hereby further enlarged and that said return day be and the same is hereby continued to the 28th day of April, 1917.

Done in open court this 20th day of April, 1917.

M. T. DOOLING,
District Judge.

[Endorsed]: No. 8700. In the United States Circuit Court of Appeals, for the Ninth Circuit. In the Matter of H. S. White, Bankrupt. Order.

No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Apr. 28, 1917, to File Record Thereof and to Docket Case. Filed Apr. 20, 1917. F. D. Monckton, Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

In the Matter of H. S. WHITE, Bankrupt.

Order Extending Return Day on Citation on Appeal to May 7, 1917.

The undersigned, District Judge, having on the 20th day of April, 1917, enlarged the time for the return of the citation on appeal herein to and including the 28th day of April, 1917, and it appearing that without fault of the said trustee in bankruptcy the clerk of the above-entitled court has been unable to prepare the record on appeal, so that it can be filed and docketed in the above-entitled court within the time fixed for the return of said citation on file so enlarged, and good cause appearing therefor:

It is hereby ORDERED that the time for such return day be and the same is hereby further enlarged and that the said return day be and the same is hereby continued and extended to the 7th day of May, 1917.

Done in open court this 28th day of April, 1917.

M. T. DOOLING,
District Judge.

[Endorsed]: No. ——. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of H. S. White, Bankrupt. Order Enlarging Time for Return of Citation on Appeal. Filed Apr. 28, 1917. F. D. Monckton, Clerk.

No. 2980. United States Circuit Court of Appeals for the Ninth Circuit. William R. Pentz, etc., vs. H. S. White, etc. Five Orders Under Rule 16 Enlarging Time to May 7th, 1917, to File Record Thereof and to Docket Case. Re-filed May 3, 1917. F. D. Monckton, Clerk.